

# INDEX

	Page
Opinion below.....	1
Jurisdiction.....	1
Questions presented.....	2
Statute and regulations involved.....	2
Statement.....	3
Summary of argument.....	16
Argument.....	20
A. Neither the statute nor the Constitution gives petitioner a right to a de novo trial by either the jury or the judge of his classification under the act and regulations.....	20
Trial de novo before the jury.....	21
Trial de novo by the judge.....	24
B. Neither the statute nor due process requires that the judge determine whether the registrant's classification was based on evidence and a fair consideration as a condition precedent to the registrant's conviction for disobedience of the order to report.....	27
1. The scheme of the statute and the effectuation of its great purposes, as well as practical considerations, require that the registrant report as ordered and then seek judicial review in habeas corpus.....	30
The Government's position.....	30
The statutory scheme.....	34
The importance of preserving the administrative process.....	45
The consequences of being wrong are more severe under petitioner's position than under that of the Government.....	51
2. The order to report is an interlocutory step in the Selective Service procedure and therefore is not the appropriate point for an attack on the classification.....	54
C. Petitioner's offer of proof was insufficient to establish arbitrary or unfair action of the administrative boards.....	57
The attack on the fairness of the boards.....	57
The attack on the sufficiency of the evidence.....	61
D. Petitioner's charge that the Selective Service System has discriminated against Jehovah's Witnesses is unfounded.....	64
Conclusion.....	78
Appendix A.....	79
Appendix B.....	84
Appendix C.....	118
Appendix D.....	126

# II

## CITATIONS

Cases:	Page
<i>Aderhold v. Soileau</i> , 67 F. (2d) 259.....	49, 50
<i>American Federation of Labor v. National Labor Relations Board</i> , 308 U. S. 401.....	55
<i>Angelus v. Sullivan</i> , 246 Fed. 54.....	50
<i>Arbitman v. Woodside</i> , 258 Fed. 441.....	50
<i>Bazley v. United States</i> , 134 F. (2d) 998.....	33, 53
<i>Benesch v. Underwood</i> , 132 F. (2d) 430.....	50, 52
<i>Bowles v. United States</i> , 319 U. S. 33.....	28, 32, 58, 61, 62
<i>Buttcali v. United States</i> , 130 F. (2d) 172.....	33, 53
<i>Chebinski v. United States</i> , 129 F. (2d) 461.....	33, 54
<i>Crane v. State</i> , 5 Okla. Cr. 560.....	23
<i>Crowell v. Benson</i> , 285 U. S. 22.....	16, 23, 26
<i>Davis v. Department of Labor and Industries</i> , 317 U. S. 249.....	27
<i>Drumheller v. Berks County Local Board No. 1</i> , 130 F. (2d) 610.....	56
<i>Endicott Johnson Corp. v. Perkins</i> , 317 U. S. 501.....	49, 55
<i>Ex parte Beales</i> , 252 Fed. 177.....	50
<i>Ex parte Green</i> , 123 F. (2d) 862, certiorari denied, 316 U. S. 668.....	51, 52
<i>Ex parte Hutfis</i> , 245 Fed. 798.....	50
<i>Ex parte Kerekes</i> , 274 Fed. 870.....	50
<i>Ex parte Platt</i> , 253 Fed. 413.....	51
<i>Ex parte Robert</i> , 49 F. Supp. 131.....	53
<i>Ex parte Romano</i> , 251 Fed. 762.....	49
<i>Ex parte Stanziale</i> , 49 F. Supp. 961, reversed, October 6, 1943.....	52
<i>Ex parte Tinkoff</i> , 234 Fed. 912.....	49
<i>Fire Department v. Gilmour</i> , 149 N. Y. 453.....	31
<i>Fletcher v. United States</i> , 129 F. (2d) 262.....	32, 55
<i>Frank v. Murray</i> , 248 Fed. 865.....	28, 50
<i>Geglow v. UH</i> , 239 U. S. 3.....	31, 34
<i>Goff v. United States</i> , 135 F. (2d) 610.....	33, 53
<i>Greenberg, Application of</i> , 39 F. Supp. 13.....	50, 52
<i>Hamilton v. Regents</i> , 293 U. S. 245.....	25
<i>Hannibal Bridge Co. v. United States</i> , 221 U. S. 194.....	23
<i>Hirabayashi v. United States</i> , No. 870, October Term, 1942.....	33, 34
<i>Honaker v. United States</i> , 135 F. (2d) 613.....	33, 53
<i>Houston v. Moore</i> , 5 Wheat. 1.....	47
<i>Howat v. Kansas</i> , 258 U. S. 131.....	49
<i>Inghram v. Union Stockyards Co.</i> , 64 F. (2d) 390.....	49
<i>Jacobson v. Massachusetts</i> , 197 U. S. 11.....	25
<i>Johnson v. United States</i> , 126 F. (2d) 242.....	33
<i>Lehigh Valley R. Co. v. United States</i> , 188 Fed. 879.....	49
<i>Locke v. United States</i> , 75 F. (2d) 157.....	49
<i>Louisiana &amp; P. B. Ry. Co. v. United States</i> , 257 U. S. 114.....	62
<i>Martin v. Mott</i> , 12 Wheat. 19.....	47
<i>McCall's Case</i> , 5 Phila. (Pa.) 259.....	48

# III

## Cases—Continued.

	Page
<i>McCann v. New York Stock Exchange</i> , 80 F. (2d) 211, certiorari denied, 299 U. S. 603.....	49
<i>McLean v. Jephson</i> , 123 N. Y. 142.....	26
<i>McLeod v. Majors</i> , 102 F. (2d) 128.....	49
<i>Micheli v. Paullin</i> , 45 F. Supp. 687.....	50, 52
<i>Mississippi Power &amp; Light Co. v. Federal Power Commission</i> , 131 F. (2d) 148.....	55
<i>Miss. Valley Barge Co. v. United States</i> , 292 U. S. 282.....	62
<i>Monongahela Bridge v. United States</i> , 216 U. S. 177.....	16, 23
<i>Myers v. Bethlehem Shipbuilding Corp.</i> , 303 U. S. 41.....	27, 48, 55, 63
<i>Ng Fung Ho v. White</i> , 259 U. S. 276.....	31
<i>People v. McCoy</i> , 125 Ill. 289.....	26, 31
<i>Piuma v. United States</i> , 126 F. (2d) 601, certiorari denied, 317 U. S. 637.....	49
<i>Rase v. United States</i> , 129 F. (2d) 204.....	11, 25, 33, 50, 53
<i>R. F. C. v. Bankers Trust Co.</i> , 318 U. S. 163.....	24, 31
<i>Richter v. State</i> , 16 Wyo. 437.....	23
<i>Rogers, In re</i> , 47 F. Supp. 265.....	50, 52
<i>School of Magnetic Healing v. McAnnulty</i> , 187 U. S. 94.....	31
<i>Seele v. United States</i> , 133 F. (2d) 1015.....	33, 54
<i>Shields v. Utah Idaho K. Co.</i> , 305 U. S. 177.....	23, 26, 27
<i>Silberschein v. United States</i> , 266 U. S. 221.....	34
<i>Spencer &amp; Garder v. People</i> , 68 Ill. 510.....	26
<i>State v. Kirby</i> , 120 Iowa 26.....	26
<i>State v. Lamos</i> , 26 Maine 258.....	26
<i>State v. Raczkowski</i> , 86 Conn. 677.....	23
<i>State v. Weimer</i> , 64 Iowa 243.....	26
<i>Stevens, Landowner</i> , 228 Mass. 368.....	26
<i>Stirge's Case</i> , Fed. Cas. No. 13458.....	51
<i>Tagg Bros. v. United States</i> , 280 U. S. 420.....	22, 62
<i>Texas and Pacific Ry. v. Abilene Cotton Oil Co.</i> , 204 U. S. 426.....	48
<i>Union Bridge Co. v. United States</i> , 204 U. S. 364.....	23
<i>United States v. Bullard</i> , 290 Fed. 704, certiorari denied, 262 U. S. 760.....	28, 49
<i>United States v. Commanding Officer</i> , 252 Fed. 314.....	51
<i>United States v. Grieme</i> , 128 F. (2d) 811.....	15, 32, 50
<i>United States v. Heyburn</i> , 245 Fed. 360.....	50
<i>United States v. Kauten</i> , 133 F. (2d) 703.....	33, 50, 53, 54, 56
<i>United States v. Kinkead</i> , 248 Fed. 141, affirmed, 250 Fed. 692.....	51
<i>United States v. Kowal</i> , 45 F. Supp. 301.....	54
<i>United States v. Los Angeles &amp; Salt Lake R. R.</i> , 273 U. S. 299.....	55
<i>United States v. Macintosh</i> , 283 U. S. 605.....	25
<i>United States v. Mroz</i> , 136 F. (2d) 221.....	33, 54
<i>United States v. Newman</i> , 44 F. Supp. 817.....	54
<i>United States v. Pace</i> , 46 F. Supp. 316.....	54
<i>United States v. Rauch</i> , 253 Fed. 814.....	50, 56

# IV

## Cases—Continued.

	Page
<i>United States ex rel. Bayly v. Reckford</i> , decided August 16, 1943.....	32
<i>United States ex rel. Bevans v. Reckford</i> , decided August 16, 1943.....	52
<i>United States ex rel. Broker v. Baird</i> , 39 F. Supp. 392.....	52
<i>United States ex rel. Cameron v. Embrey</i> , 46 F. Supp. 916.....	50, 53
<i>United States ex rel. Cascone v. Smith</i> , 48 F. Supp. 842.....	51, 53
<i>United States ex rel. Errichetti v. Baird</i> , 39 F. Supp. 388.....	50, 53
<i>United States ex rel. Filomio v. Powell</i> , 38 F. Supp. 183.....	50, 53
<i>United States ex rel. Pasciuto v. Baird</i> , 39 F. Supp. 411.....	53
<i>United States ex rel. Phillips v. Downer</i> , 135 F. (2d) 521.....	50, 51, 52
<i>United States ex rel. Ursitti v. Baird</i> , 39 F. Supp. 872.....	53
<i>Wise v. Withers</i> , 3 Cranch 330.....	31

## Statutes:

Act of April 22, 1898, 30 Stat. 361, 10 U. S. C. 1.....	32
Act of December 20, 1941, 55 Stat. 844.....	35
Act of November 13, 1942, 56 Stat. 1018.....	35
Articles of War, Sec. 2a, 41 Stat. 787, 10 U. S. C. 1473.....	28
Selective Training and Service Act of 1940, 54 Stat. 885, (50 U. S. C. Appendix 301-318):	
Section 2.....	30, 35
Section 3.....	35, 42
Section 4.....	35
Section 5 (d).....	11, 68
Section 5 (e).....	35
Section 5 (g).....	12, 36, 40, 41, 58
Section 5 (h).....	37
Section 10.....	33, 36
Section 10 (a).....	21
Section 11.....	21, 28, 30, 34, 35, 36
British National Service (Armed Forces) Act, 1939, 2 and 3 Geo. VI, Ch. 81, Sections 5 (12), 6 (9), 10 (2), 11.....	29

## Regulations:

Army Regulations 615-360 (Par. 51).....	44
Selective Service Regulations (1917), Secs. 133, 140.....	28
Selective Service Regulations:	
601.5.....	4
603.21.....	37
603.51.....	37
603.71.....	37
621.1 (a).....	84
621.3.....	8, 38
621.4.....	38
622.11.....	85
622.12.....	31
622.44 (a).....	6, 85
622.44 (b).....	85
622.44 (c).....	86

## Regulations—Continued.

	Page
622.51	39, 86
622.51 (a)	86
622.51 (b)	86
622.61	6
622.62	6
623.1 (a)	38, 86
623.1 (b)	87
623.1 (c)	4, 87
623.2	38, 87
623.21 (a)	39, 87
623.21 (b)	87
623.21 (c)	88
623.21 (d)	88
623.21 (e)	88
623.31 (a)	39, 89
623.31 (b)	89
623.33 (a)	38, 89
623.33 (b)	89
623.33 (c)	90
623.33 (g)	91
623.33 (h)	91
623.33 (j)	91
623.51 (a)	91
623.51 (b)	92
623.51 (c)	39, 92
623.51 (d)	92
623.51 (e)	92
623.61	39
625.1	39, 92
625.1 (a)	92
625.1 (b)	93
625.2	39, 93
625.2 (a)	93
625.2 (b)	93
625.2 (c)	94
625.2 (d)	94
625.2 (e)	39, 94
626.1	37, 95
626.1 (a)	95
626.1 (b)	95
626.1 (c)	95
626.2 (a)	95
626.2 (b)	96
627.1 (a)	39, 96
627.1 (b)	96
627.2 (a)	39, 96
627.2 (b)	96
627.2 (c)	97

## VI

## Regulations—Continued.

	Page
627.11	40, 97
627.11 (a)	97
627.12	40, 60, 61, 98
627.13 (a)	40, 98
627.13 (b)	98
627.23	40, 99
627.24 (a)	99
627.24 (b)	99
627.25	40, 58, 99
627.25 (a)	58, 99
627.25 (b)	100
627.25 (c)	41, 101
627.26	41, 101
627.26 (a)	101
627.26 (b)	58, 101
627.27	41, 101
627.31	41
627.41	40, 102
627.61 (a)	102
627.61 (b)	102
628	41, 103
628.1	42, 103
628.1 (a)	103
628.1 (b)	103
628.1 (c)	104
628.2	42
628.4 (a)	42
628.6	42, 104
628.7	104
628.7 (a)	105
628.7 (b)	42, 105
633.1	105
633.1 (a)	43, 105
633.9	43
633.10 (c)	43, 105
633.13	105
633.13-2 (a)	39, 44, 105
651.1	106
651.2 (a)	106
651.3 (a)	107
651.7 (a)	107
651.7 (b)	44, 107
651.8	108
651.9	44, 108
651.10 (a)	108
651.10 (b)	44, 109
652.1	44, 109
652.2	

# VII

## Regulations—Continued.

	Page
652.2 (a).....	109
652.11.....	44, 110
652.11 (a).....	110
652.12 (a).....	111
653.1 (a).....	111
653.1 (b).....	112
653.1 (c).....	112
653.2 (a).....	112
653.2 (b).....	112
653.2 (c).....	112
653.11.....	56, 113
653.11 (a).....	113
653.11 (b).....	113
653.11 (c).....	113
653.11 (d).....	114
653.11 (e).....	114
653.11 (f).....	114
653.12.....	114
653.13 (a).....	115
653.13 (b).....	115
653.15 (a).....	115
653.15 (b).....	115
653.15 (c).....	115
653.15 (d).....	116
653.15 (e).....	116
653.15 (f).....	116
653.16.....	44, 117
War Department Mobilization Regulations 1-7, Par. 13e.....	55
Miscellaneous:	
Bullock, <i>Judicial Review of Selective Service Board Classifications by Habeas Corpus</i> (1942), 10 Geo. Wash. L. Rev. 827, 829.....	50
86 Cong. Rec. 10895, 11710, 12039, 12084.....	29
C. M. 122312, Grant (1918) (Section 2238, Digest of Opinions, Judge Advocate General, Volume 1912-1930).....	29
First Report of Director of Selective Service, 1940-41 <i>Selective Service in Peacetime</i> (1942).....	37, 38, 43, 54
Hearings before House Committee on Military Affairs on the Selective Service Act of 1917, 65th Cong., 1st sess., p. 81.....	46
JAG 327.3.....	29
JAG 334.4.....	29
Letter from Hayden C. Covington.....	122
Letter from G. Myrddin-Evans, dated August 22, 1942.....	77, 118
Lewis, <i>Appeal Procedure under the Selective Service Law</i> (1942).....	37
Military Service Act, 5 and 6 Geo. V, ch. 104.....	30
National Registration Act, 5 and 6 Geo. V, ch. 60.....	30
Note, <i>Classification—Physical Deferrals</i> (1942), 17 Ind. L. J. 308, 312.....	54

# VIII

## Miscellaneous—Continued.

	Page
Note (1942), 91 U. of Pa. L. Rev. 366.....	55
Second Report of Director of Selective Service, 1941-42, <i>Selective Service in Wartime</i> (1943).....	37, 78
Yearbooks of Jehovah's Witnesses:	
1931.....	73-
1932.....	73, 74
1933.....	74
1934.....	75
1935.....	75
1936.....	75
1937.....	75
1938.....	75, 76
1939.....	75, 76
1940.....	73, 75
1941.....	75
1942.....	75
1943.....	72, 75, 76, 77

# In the Supreme Court of the United States

OCTOBER TERM, 1943

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No. 73

NICK FALBO, PETITIONER

v.

THE UNITED STATES OF AMERICA

---

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT  
COURT OF APPEALS FOR THE THIRD CIRCUIT

---

BRIEF FOR THE UNITED STATES

---

## OPINION BELOW

The *per curiam* opinion of the circuit court of appeals is reported at 135 F. (2d) 464.

## JURISDICTION

The judgment of the circuit court of appeals was entered May 6, 1943 (R. 100-101). The petition for a writ of certiorari was filed May 28, 1943, and was granted June 21, 1943 (R. 103). The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

**QUESTIONS PRESENTED**

1. In a prosecution for disobedience of an order to report for work of national importance under civilian direction, is a registrant under the Selective Training and Service Act of 1940 entitled to have either the jury or the trial judge try *de novo* the merits of his classification under the Act?

2. In a prosecution for disobedience of an order to report for work of national importance under civilian direction, is a registrant entitled to have the trial judge review his classification to determine if the Selective Service agencies acted fairly and upon evidence?

3. If Question 2 is answered in the affirmative, did petitioner sufficiently raise the question in the trial court when he claimed prejudice on the part of the local board only, whereas the effective classification was made by the board of appeal after a *de novo* consideration, and when he did not offer in evidence the file on which the administrative determination was based, though the entire file was made available to him?

**STATUTE AND REGULATIONS INVOLVED**

The pertinent provisions of the Selective Training and Service Act of 1940, as amended, and of the Selective Service Regulations, are set forth in Appendix A and Appendix B, respectively, *infra*, pp. 79-117.

## STATEMENT

Petitioner was indicted on November 12, 1942, in the United States District Court for the Western District of Pennsylvania in one count charging that, having been classified as a conscientious objector and accordingly having been placed in Class IV-E\* by the local board with which he was registered, he wilfully failed and neglected to perform duties required of him under the Selective Training and Service Act of 1940 and regulations promulgated thereunder, pursuant to his assignment as a conscientious objector to work of national importance under civilian direction (R. 82-83).

Petitioner interposed a plea in abatement to the indictment, alleging that he had been a "regular minister of religion" since 1931 and a "duly ordained minister" since September 1, 1940, and that these facts were made known to the local board at the time he filed his questionnaire and special form for conscientious objectors. He contended in his plea (1) that the local board was without authority to order him to report for work of national importance because the Act exempts regular and duly ordained ministers of religion from training and service, although not from registration, and (2) that the court was without jurisdiction because he had valid reasons for having failed to perform the duty required of him, namely, that the local board had acted

\* The meaning of this and other classification symbols is explained in Appendix D, *infra*, p. 126.

unfairly, arbitrarily, and capriciously and in violation of the Selective Service Regulations, in consequence whereof he was wrongly classified and ordered to report.<sup>1</sup> (R. 3-4, 8.) The Government, although not admitting the facts alleged in the plea, asked that it be denied on the ground that it sought to raise an issue which had already been determined by the proper tribunal and was not for the court to determine (R. 8-9). The plea was denied on that ground, the district court stating that "the Board has the decision of whether or not this man is to be listed as he claims he should be" (R. 9).

The evidence introduced by the Government in the trial before a jury (R. 8) showed as follows:

---

<sup>1</sup> Petitioner cited in this connection (R. 3, 4) Section 623.1 (c) of the Selective Service Regulations, which provides: "In classifying a registrant there shall be no discrimination for or against him because of his race, creed, or color, or because of his membership or activity in any labor, political, religious, or other organization. Each registrant shall receive equal and fair justice."

Section 601.5, which petitioner also cited in his plea (R. 4), defines a "delinquent" as, *inter alia*, any registrant who, prior to induction, fails to perform any duty imposed upon him by the Act and directions given pursuant thereto and has no valid reason for having failed to perform the duty. Although petitioner cited this section in connection with his allegation that the local board "violated and omitted material steps prior to the order to report and contrary to the rules and regulations of the Selective Service System" (R. 4), the import of the allegation presumably was that he should not be considered a delinquent because he had a valid reason for failing to report as ordered in that the local board had acted arbitrarily, and that for this reason the court was without jurisdiction.

Petitioner registered with Local Board No. 11 of West Newton, Westmoreland County, Pennsylvania, on October 16, 1940 (R. 10-11, 50).<sup>2</sup> His Selective Service Questionnaire was filed with the board on August 23, 1941 (R. 51). Petitioner was then 26 years of age (R. 52), single, and had no dependents (R. 54-55). In his questionnaire, he stated his occupation to be "'Pioneer' for Watchtower Bible and Tract Society," that he worked as a "'Minister' Preaching the Gospel of God's Kingdom," that he had had 11 years' experience in this work, and that he received no earnings from it (R. 52). He also stated that he had worked as a clerk selling clothing from 1937 to 1939, but that his usual occupation and the one for which he was best fitted was that of "Minister" (R. 54). In the section of the questionnaire provided for ministers and students preparing for the ministry, he claimed that he had been a minister of religion of the Watchtower Bible and Tract Society since July 1, 1930, that he was formally ordained by the Society on that date, and that he customarily served as a minister (R. 56). In addition, he stated that by reason of religious training and belief he was conscientiously opposed to participation in war in any form and he therefore claimed exemption from combatant training and service (R. 56). Finally, he stated that in his opinion his classification should be

<sup>2</sup> Neither side sought to introduce petitioner's entire Selective Service file; each introduced portions of it.

IV-D, as a minister (see Reg. 622.44 (a)) (R. 57).

The clerk of the local board testified that petitioner was classified in "Tentative 1" by the local board on August 25, 1941 (R. 11); that he appealed this classification on January 26, 1942, and was classified I-A by the board of appeal (R. 11-12); that he "again submitted evidence" to the board of appeal and asked that his file be returned to that board; and that on June 17, 1942, the board of appeal classified him IV-E, as a conscientious objector, by a vote of four to nothing (R. 12).<sup>3</sup> In accordance with the directions

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<sup>3</sup> The testimony of the clerk does not conform in all respects with the notations appearing on page 8 of petitioner's Selective Service Questionnaire. According to these notations petitioner was classified in Class I by the local board on August 25, 1941, and in Class I-A "as per Form 200" on January 19, 1942. (Form 200 is the Report of Physical Examination by the examining physician of the local board.) His notation of appeal is dated January 26, 1942, and the action of the board of appeal in classifying him I-A is dated January 24, 1942. The minute of this action by the board of appeal states, however, that it was "subject to question of conscientious objection" and that the case was referred to the Department of Justice on that date. Petitioner was classified in Class IV-E by the board of appeal on June 17, 1942, and on July 15, 1942, the local board reclassified him in that class "as per classification recommendation of the Appeal Board" (R. 58). The notation of reclassification in Class IV-F appearing at the bottom of page 8 (R. 58) is dated January 5, 1943, which was subsequent to the trial and judgment of conviction (R. 8, 80-81). Petitioner was apparently reclassified IV-F because of his conviction. See Reg. 622.61, 622.62.

of the State Director of Selective Service, the local board notified petitioner on August 21, 1942, that he had been assigned to work of national importance under civilian direction at Civilian Public Service Camp No. 46 at Big Flats, New York, and ordered him to report to the local board on September 2, 1942, for instructions and papers (R. 13-14, 59). Petitioner failed to report as ordered (R. 15).

At the close of the Government's case petitioner moved to dismiss the action on substantially the same grounds as those alleged in his plea in abatement (*supra*, pp. 3-4), and on the further ground that the Government's evidence showed that at all times since his registration he had been a regular and duly ordained minister (R. 6-7, 22). The motion was denied (R. 23).

In defense to the charge of the indictment, petitioner sought to prove that he was in fact a minister of religion and that the local board denied him a hearing. Some evidence concerning his status with the Watchtower Bible and Tract Society was admitted without objection: petitioner testified that he was a "special representative known as a special pioneer for the Watch Tower Bible and Tract Society" and "a regular and duly ordained minister of the" Society (R. 23); that he had been engaged "as one of Jehovah's witnesses, as a regular minister of religion" from 1930 until September 1, 1940, when he was appointed a "pioneer minister"; that he became a "special pioneer" on

April 16, 1942; and that since 1930 he had customarily preached and taught the principles of the Society as a minister of the group or class of people known as Jehovah's Witnesses (R. 23-24, 36, 37). Petitioner was permitted to introduce in evidence, limited to the purpose of showing that he was a conscientious objector as determined by the board of appeal (R. 26-28), the special form for conscientious objectors which he had filled out and filed with the local board on or about August 30, 1941 (R. 63-66).<sup>\*</sup> In the form, petitioner claimed exemption from participation in war in any form and from participation in any service which is under the direction of military authorities (R. 63). He stated that he received his religious training and acquired his belief, which were the bases of his conscientious objections, by studying the Bible and publications of the Watchtower Bible and Tract Society and by attending Bible studies, and that he acquired his belief on July 1, 1930, "through" the Society (R. 63); that he became a member of Jehovah's Witnesses on that date "by consecration, and by reading the Watchtower Publications"; and that the church, congregation, or meeting which he customarily attended was "Kingdom Hall," Monessen, Pennsylvania, of which one Angelo Galuppo was the pastor or leader (R. 65). Galuppo was identified in the form as a "Company-Servant," and petitioner

<sup>\*</sup> This form, when filed, becomes a part of the registrant's questionnaire (Reg. 621.3; see also R. 63).

referred to him and one Earl V. Singer, a "Zone Servant," as persons who could supply information as to the sincerity of petitioner's professed convictions against participation in war (R. 66). Attached to the form (R. 26) was an undated certificate issued by the Watchtower Bible and Tract Society stating that petitioner was an "ordained minister of Jehovah God to preach the gospel of God's kingdom under Christ Jesus and is therefore one of Jehovah's witnesses; that he is sent forth by this Society, which is created and organized and chartered by law to preach the gospel of God's kingdom, and that Jehovah's witnesses are commanded to obey God by preaching the gospel"; and that "Jehovah's witnesses preach the gospel and worship Almighty God by calling upon the people at their homes and exhibiting to them the message of said gospel in printed form, such as the Bible, books, booklets and magazines, and thus afford the people the opportunity of learning of God's gracious provision for them" (R. 67). In a document entitled "My Statement," which he also attached to his conscientious objector's form (R. 26), petitioner stated that he had been one of Jehovah's Witnesses for 11 years and had "actively engaged in preaching the Gospel of God's Kingdom from house to house and from city to city"; that he was "recognized by the Watchtower Bible and Tract Society as a full time publisher known as a 'Pioneer'"; that his name had not

appeared on the "list of full time publishers" published in "Consolation #569,"<sup>s</sup> which he had filed with his questionnaire, because he had had his "name temporarily removed because of sickness but it has been re-entered since, and I have resumed in the Pioneer service"; that his "purpose and commission is to give testimony before the people of the world that Jehovah is the Almighty God and that His purpose is to set up in full operation 'The Theocracy,' " which is "the government of Jehovah God by and under the immediate direction of Christ Jesus the King"; that as a "witness transmitting the message of Almighty

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<sup>s</sup> The reference was to the July 9, 1941, issue of "Consolation," a biweekly magazine published by the Watchtower Bible and Tract Society. This issue contained a reprint of Opinion No. 14 of the Deputy Director of Selective Service, dated June 12, 1941 (see Appendix to Petitioner's Brief, pp. 36-39), concerning the ministerial status of Jehovah's Witnesses, together with lists of Jehovah's Witnesses known as members of the Bethel family and pioneers who, in the opinion of the Deputy Director, might be classified as ministers within the meaning of the Act. Concerning pioneers, Opinion No. 14 stated that "The members of Jehovah's Witnesses who devote their time to the work of teaching the tenets of their religion and in the converting of others to their belief, and who enjoy the esteem of other Jehovah's Witnesses, and are each individually recorded as 'pioneers' by the Watchtower Bible and Tract Society, Inc., at its executive offices in Brooklyn, New York, are in a position where they may be recognized as having a standing, in relationship to the organization and to the other members of Jehovah's Witnesses, similar to that occupied by regular or duly ordained ministers in other religions, and such persons who spend all or a substantial part of their time in the work of Jehovah's Witnesses, as set forth above, come within the purview of Section

God" and a sincere person "devoted to Jehovah \* \* \* in a covenant to do His will and \* \* \* accepted by Him," he was ordained by God as a minister; that as a Jehovah's Witness "wholly devoted to Almighty God, and to His Kingdom under Christ Jesus," he could not "take sides in a war between nations, both of which are against God and His Kingdom"; and that it was "the will of Almighty God Jehovah, and of his King Christ Jesus," that he should "not engage in war between the nations of the earth" and that he was "forbidden to so engage therein." Petitioner concluded his statement with a request "for classification (4-D) for complete exemption." (R. 69-70.)

5 (d) of the Selective Training and Service Act of 1940 and may be classified in Class IV-D, provided that the names of such persons appear on the certified official list of such persons transmitted to State Directors of Selective Service by National Headquarters of the Selective Service System." The list of pioneers and members of the Bethel family referred to in Opinion No. 14 was prepared by the Watchtower Bible and Tract Society at the request of National Headquarters of the Selective Service System (see *Rose v. United States*, 129 F. (2d) 204, 208 (C. C. A. 6)). Petitioner's name did not appear on the list of pioneers furnished by the Society pursuant to this request (see R. 69). Petitioner's Selective Service file shows that an application by the Society to National Headquarters to have petitioner's name added to the certified official list of pioneers and members of the Bethel family was denied in May 1942 and that this information was communicated to the local board by the acting State Director of Selective Service under date of May 18, 1942, while petitioner's appeal was pending before the board of appeal (see n. 3, p. 6, *supra*).

The court excluded as having no bearing on the issues in the case (R. 29) another certificate issued by the Watchtower Bible and Tract Society on October 7, 1941, stating that petitioner had been associated with the Society since 1931; that he had been appointed in 1941 as a "direct representative of this organization to perform missionary and evangelistic service in organizing and establishing churches and generally preaching the Gospel of the Kingdom of God in definitely assigned territory"; that his entire time was "devoted to missionary work" and that he had "declared himself to be a follower of Christ Jesus and wholly consecrated to do the will of Almighty God"; and that he had "the Scriptural ordination to preach 'this Gospel of the Kingdom'" and was, "therefore, declared by this Society a duly ordained minister of the Gospel" (R. 71).<sup>6</sup>

Petitioner sought to show through the testimony of the witness Galuppo, who was described

<sup>6</sup> The court also excluded (R. 29-30) a letter from the Society, dated May 21, 1942, addressed to M. W. Acheson, the hearing officer of the Department of Justice who heard petitioner's claim for exemption as a conscientious objector (see Sec. 5 (g) of the Act, Appendix, *infra*, pp. 79-81), concerning petitioner's standing with the Society. This letter stated that petitioner became a "full-time pioneer and direct representative in carrying on the work of preaching the gospel on September 1, 1940," that his name was removed from the full-time list on January 29, 1941, after he had written the Society that his health prevented him from serving full time, that he was reinstated to the full-time list upon his own application on August 16, 1941, and that he was "promoted to special publisher pioneer" on April 16, 1942 (R. 77).

as "the managing agent of the Watchtower Bible and Tract Society in the Monessen district" (R. 35), that he was reputed to be "an ordained minister of religion" and was engaged in no other occupation; that he was a "special pioneer" appointed by the Society and was required to devote 175 hours per month "in this capacity"; that he regularly conducted Bible study classes and engaged in house to house work "in the proclamation of the knowledge of the Bible"; and that at all times since his registration under the Act he "spent his entire time in the ministerial work" (R. 34-35). Petitioner also attempted to prove by his own testimony that a pioneer is required by the Society to "put in at least 150 hours per month in preaching the Gospel"; that a pioneer occupies a privileged status, "under which the individual who puts in this number of hours is granted compensation by means of reduced costs of literature that is distributed among the people, so that he might defray his expenses" (R. 36-37); and that prior to September 1, 1940, when he was appointed a pioneer, he "spent not less than thirty hours per month in ministerial work" (R. 39). In addition, petitioner offered to prove that when he went before the local board for a hearing, one of the board members told him, "I do not have any damned use for Jehovah's Witnesses," and that petitioner "attempted to produce evidence by affidavits from the Watch Tower Bible and Tract Society and from his work that he

had done, as well as the scriptural authority from the Bible," but was told that the board had "no time to listen to this" (R. 33).<sup>7</sup>

Objections by the Government to the proffered evidence described in the preceding paragraph were sustained by the trial judge, principally on the ground that such evidence related to petitioner's classification and the court had no authority to disturb the determination of the Selective Service boards in classifying petitioner as a conscientious objector (R. 33, 35-36, 37, 38, 39).<sup>8</sup>

<sup>7</sup> The offer of proof went to the conduct of the local board only. No evidence was offered tending to show prejudice or a refusal to receive evidence on the part of the appeal board. See *infra*, pp. 57-61.

<sup>8</sup> The court also excluded the following documents which petitioner offered: a statement signed by petitioner outlining his standing with the Watchtower Bible and Tract Society and requesting reclassification as a minister (R. 30, 72) (this statement bears no date and is addressed "To whom it may concern"; it is marked as an exhibit in the hearing before Mr. Acheson and apparently was submitted to him (R. 72)); petitioner's letter to the local board dated September 8, 1942, in response to the Board's notice to him of suspected delinquency (R. 31, 61), in which petitioner requested the board "to reconsider my case and all of my documents which have been directly or indirectly forwarded to the Board because the Board has erred in classifying me in IV-E" (R. 30-31, 62); a statement concerning his work, dated September 9, 1942, which petitioner gave to an agent of the Federal Bureau of Investigation (R. 31-32, 78-79); and three affidavits of other persons, dated in May 1942, stating that petitioner was a "Pioneer" for the Society (R. 30, 73, 74-75, 76). Apart from the question of their relevance to the issues, the *ex parte* statements and affidavits were objected to and rejected as self-serving declarations and as not being the best evidence of the matters contained therein. (See R. 30, 32.)

Similarly, in his charge to the jury, the judge instructed, *inter alia*, that petitioner's classification in Class IV-E as a conscientious objector was binding upon the court and jury, and that if petitioner had any legal objection to his classification he could have had it judicially determined by reporting to the local board and then applying for a writ of habeas corpus (R. 41). Petitioner's exceptions to the charge (R. 42) were overruled, as were his requested instructions that the jury should acquit if they found that the "Local Board was prejudicial, unfair, arbitrary and capricious toward the defendant in its classification and its refusal to grant him a hearing" (R. 42), or if the jury found that petitioner was "a regular and or duly ordained minister of religion, and that the Local Board and Board of Appeals had knowledge of this from the evidence presented" (R. 42-43).

Petitioner was convicted (R. 43, 80) and was sentenced to imprisonment for five years (R. 48, 80-81). On appeal to the Circuit Court of Appeals for the Third Circuit, the conviction was affirmed *per curiam* (R. 100-101) on the authority of the earlier decision of that court in *United States v. Grieme*, 128 F. (2d) 811. In that case the court held that "The correctness of the classification made by the local draft board and the question whether the board acted in an arbitrary or capricious manner are not defenses to a prose-

cution under the Act for a failure to comply with the board's order" (p. 815).

#### SUMMARY OF ARGUMENT

A. Petitioner is not entitled to a trial *de novo* before either the jury or the judge concerning the merits of his draft classification. It is well settled that the courts will not review *de novo* an administrative determination unless Congress has placed on them the obligation to do so. Here Congress has not done so. On the contrary, it has made the administrative determination final. The presumption of innocence in criminal cases, of course, does not affect this rule; there is no presumption that the order to report is invalid but only that petitioner did not knowingly disobey it. That the jury may not ordinarily question such an administrative decision has been clear since *Monongahela Bridge v. United States*, 216 U. S. 177, and the reasons for the rule are the stronger where, as here, the order is made in the exercise of the war power to summon the manpower of the nation to its defense. And petitioner's argument in reliance on *Crowell v. Benson*, 285 U. S. 22, that the judge must determine his status *de novo* because the board had no jurisdiction to order him to report if he was in fact a minister, is without merit because *first*, ministers are not constitutionally exempt from the Selective Service Act, and he makes no claim to the contrary; and *second*, Congress, in bestowing an ex-

emption on ministers, has placed in the Selective Service System the power and duty to decide the claim of exemption, as well as claims to deferred status.

B. Petitioner was not entitled to have the trial judge determine whether the Selective Service boards denied him a fair hearing or acted without evidence, nor to have the judge, if he thought petitioner's classification was arbitrary, declare that petitioner was entitled to disobey the order to report. Considerations of due process are fully satisfied by the careful administrative safeguards together with the right after induction to raise these questions by habeas corpus. The Constitution does not demand that the registrant be also entitled to flout with impunity the order to report. In time of national peril an army must be raised and supporting activities performed. One called who refuses to respond or who goes to jail contributes nothing to the services which are the reason for the call. Anything which encourages a registrant either to stand uncompliant or to challenge his classification from a position from which he goes to jail instead of to the army if his classification is upheld, is contrary to the purpose of the Selective Service Act and does not serve the need of the nation. The fairness of permitting this attack to be made as defense in a criminal proceeding is also illusory, because the Selective Service classification has been upheld in

all but two instances out of some 105 in which alleged arbitrariness of the classification was considered in habeas corpus proceedings. It is less stringent to induct the unsuccessful attacker than to punish him. Induction is not a penalty, or a sentence, but the fulfillment of an obligation applicable to all, equally, within the ambit of the call.

No analogy is perfect, but in the most nearly analogous instances administrative or judicial orders have been held to impose a duty of obedience subject to no exceptions, even though erroneous and possibly subject to being set aside by appropriate procedure.

The order to report should be obeyed also because it is but an interlocutory step in the process of induction into the armed forces or civilian service camps. After reporting the selectee may be rejected, as a substantial percentage are, for physical or other unfitness. Thus until the final step is taken any irregularity in the selectee's classification has not operated to his injury and he should be required to withhold his attack.

C. Even if arbitrariness of the Selective Service boards were a defense in a criminal proceeding, petitioner would not be in a position to benefit. His offer of proof did not even charge that the board of appeal, which made the effective classification after considering petitioner's status *de novo*, was prejudiced against him or refused to consider his evidence. His offer did not raise the

issue of the sufficiency of the evidence because he offered only the portions of the file which were in his favor, which was not all on which the boards relied. To make a sufficient offer of proof regarding insufficiency of the evidence petitioner should have offered his entire file in evidence, as this Court has held in analogous cases. Petitioner's plea in abatement also fails to raise these issues adequately. It attests petitioner's preoccupation at the trial with a reclassification *de novo* by the jury or judge, and with the alleged prejudice of the local board. On its face it is insufficient also because it would establish, contrary to the fact, that petitioner failed to exhaust his administrative remedies.

D. The charge that the Selective Service System has discriminated against Jehovah's Witnesses is unfounded. Selective Service at the outset displayed the utmost liberality in classifying Witnesses as ministers and accepted without question or investigation the list prepared by the Watchtower Bible and Tract Society certifying some 1,000 registrants as ministers. Petitioner's name was not on this list. This acceptance was discontinued only when the names sought to be added to the list multiplied almost overnight and it became apparent that safeguards should be taken against abuse. Notwithstanding, Selective Service has continued to give the problem fair, unprejudiced consideration.

## ARGUMENT

A. Neither the statute nor the Constitution gives petitioner a right to a *de novo* trial by either the jury or the judge of his classification under the act and regulations

As shown in the Statement, *supra*, pp. 5-6, petitioner's claim that he was a minister of religion was considered and rejected by both the local board and the board of appeal, and the latter classified him in Class IV-E as a conscientious objector. Petitioner would accord this determination no more than interlocutory effect, for he contends that he was entitled by noncompliance with the consequent order to report, followed by arrest and indictment, to have either the jury or the judge try *de novo* the question whether he was a minister. He sought at the trial to show both by documents which were submitted to the boards and by additional evidence that he was in fact a minister; in addition, he requested the court to charge the jury that if the jury found that he was a minister and that the boards had knowledge of this, the jury should acquit him (R. 42-43). Surely, we submit, the exclusion of evidence seeking to retry before the jury the issues which were to be resolved under the statute by the Selective Service boards was entirely proper. Moreover, petitioner sought by plea in abatement (R. 3-5), and by motion to dismiss (R. 6-7), to have the judge proclaim him a minister, presumably as a matter

of law. We submit that the judge properly declined.

*Trial de novo before the jury.*—The statute commits to the local boards the power to hear and determine, subject to the right of appeal to the appeal boards, “all questions or claims with respect to inclusion for, or exemption or deferment from, training and service under this Act of all individuals within the jurisdiction of such local boards,” and provides that the decisions of the local boards “shall be final except where an appeal is authorized in accordance with such rules and regulations as the President may prescribe” (Sec. 10 (a) (2), Appendix A, *infra*, pp. 81–82). The Act contains no provision for review in the courts of a Selective Service classification. It contemplates that resort will be had to the courts only in the enforcement of the Act. Section 11, which makes criminal the knowing failure to perform any duty required by the Act or the rules and regulations made under it, confers jurisdiction on the courts to try one charged with such offense. It makes no provision for examination by the courts into matters antecedent to the failure to perform the duty. This silence, the whole scheme of the statute to accomplish its purpose, and the power lodged in the courts to enforce and that alone, are together conclusive of the Congressional plan. Administrative action must inevitably have been taken, in most cases, prior to the imposition of the

specific duty to be performed. The conclusion seems inescapable, therefore, that Congress intended that the classification of a registrant by the Selective Service boards would be final and not subject to examination by the courts in a prosecution of a registrant for failure to perform the duty required of him pursuant to his classification. A court in reviewing an administrative determination, will not retry the merits *de novo* in the absence of specific statutory authority to do so, notwithstanding express statutory authority, absent here, to review the determination (cf. *Tagg Bros. v. United States*, 280 U. S. 420, 443-444) and this settled doctrine is of particular force here in view of the above-quoted provisions of the Selective Training and Service Act of 1940.

Petitioner argues, however, that the rule of finality of an administrative factual determination applicable in civil review proceedings does not apply in a criminal prosecution for violation of an administrative order, where the accused is presumed to be innocent and the burden rests upon the Government to prove him guilty beyond a reasonable doubt (Br. 58-60, see also Br. 27-39, 56). But one accused is presumed to be innocent of the offense with which he is charged—here disobedience of the order to report. The presumption does not include a presumption that an order valid on its face is invalid, but only that petitioner did not knowingly fail or neglect to per-

form the duty which the order enjoined upon him. Nor does due process require that the defendant in a criminal prosecution under the Act shall be permitted to have the jury, rather than the boards, pass upon his classification, for it is settled that Congress may entrust to administrative agencies the function of determining the facts in matters arising between the Government and persons subject to its authority, and may invest the determinations of such agencies with the quality of finality even where criminal consequences are brought into play by the determination. See *Shields v. Utah Idaho R. Co.*, 305 U. S. 177, 180; *Crowell v. Benson*, 285 U. S. 22, 50-51, and the dissenting opinion of Mr. Justice Brandeis, at p. 77.<sup>9</sup> Indeed, the contention has long since been rejected by this Court in the case of a criminal prosecution for failing to comply with an order of the Secretary of War to alter a bridge over a navigable waterway which the Secretary had found, pursuant to the authority vested in him by statute, constituted an unreasonable obstruction of navigation. In *Monongahela Bridge v. United States*, 216 U. S. 177, 195, this Court said:<sup>10</sup>

<sup>9</sup> Contra, *Richter v. State*, 16 Wyo. 437; *State v. Raczkowski*, 86 Conn. 677; and *Crane v. State*, 5 Okla. Cr. 560, relied on by petitioner (Br. 35, 37).

<sup>10</sup> See also *Union Bridge Co. v. United States*, 204 U. S. 364; *Hannibal Bridge Co. v. United States*, 221 U. S. 194. The Court also stated, in the *Monongahela Bridge* case, that in the event of arbitrary action the courts are not powerless to

It was not for the jury to weigh the evidence and determine, according to *their* judgment, as to what the necessities of navigation required, or whether the bridge was an unreasonable obstruction. The jury might have differed from the Secretary. That was immaterial; for Congress intended by its legislation to give the same force and effect to the decision of the Secretary of War that would have been accorded to direct action by it on the subject. [*Italics the Court's.*] <sup>11</sup>

*Trial de novo by the judge.*—Petitioner also argues, in effect (Br. 60–64), that his claim that he was a minister was tantamount to a denial of the jurisdiction of the local board to order him to report for service under the Act and that he was entitled to a *de novo* trial by the judge of this issue of jurisdiction.

At the outset it should be noted that, contrary to petitioner's suggestion (see Br. 62), no distinc-

devise a remedy. We point out hereinafter (pp. 32–33) that habeas corpus is available after induction to test whether actions of Selective Service are arbitrary.

<sup>11</sup> Petitioner also suggests (see Br. 99–102) that his proffered evidence that he was in fact a minister should have been admitted so as to enable the jury to determine whether his Selective Service classification was arbitrary because not founded on evidence. But even were that question open in the criminal prosecution for failure to comply with the order to report (an issue we discuss *infra* pp. 27–57), it was a question solely of law which was not for the jury to decide. See *F. F. C. v. Bankers Trust Co.*, 318 U. S. 163, 170.

tion in this regard can be made between claims for deferment and claims for an exempt-status. The Act gives the local boards authority to determine, subject only to the right of administrative appeal, all claims for exemption or deferment from training and service, including claims for exemption as a minister;<sup>12</sup> their jurisdiction under the statute is therefore not affected by the nature of the claim asserted. Hence the same issue would be presented in the case of a registrant who claimed to be a conscientious objector to combatant military service (Class I-A-O), or to both combatant and noncombatant military service (Class IV-E) as did petitioner, or who claimed deferment as a person with dependents (Class III), or physically unfit (Class IV-F), or in an essential occupation (Class II). In all such cases the boards are required to conform to the regulations promulgated for their governance and they are equally bound in one case as in another to recognize a claim for exemption or deferment

<sup>12</sup> This Court has held that the exemption conferred on ministers is entirely statutory and is not compelled by the Constitution, *Jacobson v. Massachusetts*, 197 U. S. 11; *Hamilton v. Regents*, 293 U. S. 245, 266; *United States v. Macintosh*, 283 U. S. 605, 623-624; *Ruse v. United States*, 129 F. (2d) 204, 210 (C. C. A. 6.). In the *Jacobson* case it was said: " \* \* \* [a person] may be compelled, by force if need be, against his will and without regard to his personal wishes or his pecuniary interests, or even his religious or political convictions, to take his place in the ranks of the army of his country and risk the chance of being shot down in its defense. \* \* \* " (197 U. S. 11, 29.)

which comes within the applicable regulation. It is equally true that in respect of all such claims the Selective Service System is the final statutory arbiter of issues of fact relating to the registrant's proper classification.

It follows from this, we think, that no issue of the "jurisdiction" of Selective Service is involved in the denial of a claim to an exempt status. See *Shields v. Utah Idaho R. Co.*, 395 U. S. 177, 184.<sup>13</sup> The question whether petitioner was a minister was one which the boards had the power and duty under the Act to determine. They had jurisdiction of petitioner and of the subject-matter and any error in determining his claim does not impair that jurisdiction.<sup>14</sup>

*Crowell v. Benson*, 285 U. S. 22, which petitioner invokes, has no application here. The rule of that

<sup>13</sup> The question in the *Shields* case was whether an electric railroad was "excepted" from the scope of the Railway Labor Act. The answer turned on whether the railroad was an interurban railroad not operated as a part of a general steam railroad system of transportation. This Court held it error for the district court to try the question *de novo*; and that the rule of finality of administrative decisions applied. Hence if on the record before the Interstate Commerce Commission the determination of the latter was supported by substantial evidence, the administrative determination was to be upheld, notwithstanding that the question was one of exemption.

<sup>14</sup> *McLean v. Jephson*, 123 N. Y. 142; *Stevens, Landowner*, 228 Mass. 368; *State v. Lamos*, 26 Maine 258; *Spencer & Garder v. People*, 68 Ill. 510; *People v. McCoy*, 125 Ill. 289, 297; *State v. Weimer*, 649 Iowa 243; *State v. Kirby*, 120 Iowa 26, relied on by petitioner (Br. 35, 36) are thus not in point since they endorse a judicial review to determine only that the administrative agency had jurisdiction to act.

decision, in respect of the judicial duty to hear and determine *de novo* issues of fact underlying the jurisdiction of administrative tribunals, is narrowly confined to issues touching matters of fundamental or constitutional right or power, or, in other words, issues of fact which are jurisdictional in the constitutional sense. *Shields v. Utah Idaho R. Co.*, *supra*, at 184-185. Compare *Davis v. Department of Labor and Industries*, 317 U. S. 249, 256-257; *Myers v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 50-51. No such issue is involved in a Selective Service classification. Petitioner claims no constitutional right to exemption or deferment from the obligation to render military service and, since it is clear the boards had jurisdiction, no issue is tendered for a *de novo* trial by the judge.<sup>15</sup>

B. Neither the statute nor due process requires that the judge determine whether the registrant's classification was based on evidence and a fair consideration as a condition precedent to the registrant's conviction for disobedience of the order to report

Petitioner contends in the alternative, however, that at the least he was entitled to a review by the judge of the evidence upon which his classification was founded (Br. 64-66; see also Br. 94-95). He contends that, despite the mandate of the statute, Selective Service determinations are invested with no greater degree of finality than are the decisions of other administrative tribunals whose decisions on matters of fact are expressly made subject to

<sup>15</sup> See footnote 12, *supra*, p. 25.

judicial review, and that a registrant may, if he thinks his classification is erroneous, elect to disobey an order to report and seek to have the classification set aside in the consequent criminal prosecution for arbitrary classification or lack of evidence to support it. We think petitioner cannot prevail in this contention.

The question sought to be raised in *Bowles v. United States*, 319 U. S. 33, was similar, but that case was decided on other grounds. The question did not arise under the 1917 draft law since criminal sanctions were not utilized in the last war for failure to report for induction. Rather, under the 1917 Act and regulations, a registrant was considered to be inducted and subject to military law immediately from the time designated to report. If he failed to report, he was subject to court martial for desertion. Articles of War, Sec. 2a, 41 Stat. 787, 10 U. S. C. 1473; Selective Service Regulations (1917) Secs. 133, 140; *Franke v. Murray*, 248 Fed. 865 (C. C. A. 8); cf. *United States v. Bullard*, 290 Fed. 704, 707 (C. C. A. 2), certiorari denied, 262 U. S. 760.<sup>16</sup> Accordingly, the question of available de-

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<sup>16</sup> Section 11 of the 1940 Act provides that "No person shall be tried by any military or naval court martial in any case arising under this Act unless such person has been actually inducted." This provision was a Senate floor amendment, eliminating a provision giving the civil and military courts concurrent jurisdiction. The purpose of the amendment was to maintain civil jurisdiction until the end of the process of selection; there is nothing in its history to indicate, how-

fenses in a criminal proceeding for failing to report for induction was not presented.<sup>17</sup>

Nor is the problem presented in Great Britain. Under the British National Service (Armed Forces) Act, 1939, 2 and 3 Geo. VI, Ch. 81, judicial review is not possible since that statute provides, in respect of matters committed to the determination of the various agencies established for its administration, that the decisions of such

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ever, that the *defenses available* were to be expanded.—See 86 Cong. Rec. 10895, 11710, 12039, 12084. In the House the purpose was stated as follows: "We should not let a military court determine whether a military court martial has jurisdiction of the draftee." 86 Cong. Rec. 11710. In the Senate the author of the provision stated that it would substitute the civil courts for the military courts. 86 Cong. Rec. 10895.

<sup>17</sup> But in habeas corpus proceedings brought by registrants who had not reported for induction, it was held that erroneous classification did not justify a refusal to report. See cases cited, *infra*, p. 49. Under the 1917 Act, the Judge Advocate General repeatedly ruled that a plainly mistaken classification did not void the induction and accordingly the registrant was required to apply to the military for discharge. JAG 334.4, June 7, 1918; JAG 327.3, October 30, 1918, November 9, 1918. And an erroneous classification was held no defense in a court martial for desertion arising out of failure to report for induction. See C. M. 122312, Grant (1918) (Section 2238, Digest of Opinions, Judge Advocate General, Volume 1912-1930), in which it was stated—

"While it is true there was no direct evidence that the accused was registered or classified, the order to entrain and proceed to camp is established beyond all doubt. The order imports rightfulness and verity as against any assault in these proceedings" (C. M. #122330, Choroshen; C. M. #114991, Aniki).

agencies shall not be called in question in any court of law (Secs. 5 (12), 6 (9), 10 (2)).<sup>18</sup>

1. THE SCHEME OF THE STATUTE AND THE EFFECTUATION OF ITS GREAT PURPOSES, AS WELL AS PRACTICAL CONSIDERATIONS, REQUIRE THAT THE REGISTRANT REPORT AS ORDERED AND THEN SEEK JUDICIAL REVIEW IN HABEAS CORPUS

*The Government's position.*—We believe that the statute does not permit, and considerations of due process do not require, that the district court in a prosecution for violation of an order to report constitute itself into a tribunal to review the defendant's classification. The pattern of the statute in making the Selective Service determination final, without any provision for judicial review, and in imposing criminal sanctions for disobedience of an order to report, manifests a purpose, as we have shown (*supra*, pp. 21-22), to exclude judicial review in the criminal prosecution. Consistently with the great purpose in time of national peril to raise armed forces by a system of selective compulsory training and service, the intent and scheme of the statute is that the order to

<sup>18</sup> This statement is not, however, applicable to those claiming to be ministers since they are not required to register (Sections 2 and 11 (1)) and therefore are not classified by any administrative agency. In prosecutions for failure to register, it would seem that the courts must decide whether the defendant is a minister. Under the 1916 Acts ministers were required to register (National Registration Act, (1915) 5 & 6 Geo. V. ch. 60, sec. 1) but not to serve (Military Service Act (1916) 5 & 6 Geo. V., ch. 104, schedule 1) and were not classified administratively (see sec. 2 (1)); thus the cases arising under it relied on by petitioner are inapposite (Br. 32, 72): In this connection see footnote 71, *infra*, pp. 77-78.

report must be obeyed. This central purpose and the plan which Congress has adopted for its effectuation should not, we submit, be weakened by adopting the course which petitioner advocates, whereby the registrant is permitted to choose the penitentiary even if his classification is upheld. We recognize that where, as here, Congress has not ~~recognize that where, as here, Congress has not~~ provided for judicial review, the courts are nevertheless not powerless to set aside an arbitrary or capricious administrative determination. See *Ng Fung Ho v. White*, 259 U. S. 276; *Gegiow v. Uhl*, 239 U. S. 3; *School of Magnetic Healing v. McAnnulty*, 187 U. S. 94. Cf. *R. F. C. v. Bankers Trust Co.*, 318 U. S. 163.<sup>10</sup> But we think that the statutory purpose and scheme can be preserved and the rights of the registrant under the Act protected against abuse in the administrative process by re-

<sup>10</sup> *Wise v. Withers*, 3 Cranch 330, a tort case relied on by petitioner, cannot aid him. Under a statute requiring the enrollment in the militia of all able-bodied white men between the ages of 18 and 45, except those exempt from military duty by the laws of the United States, which laws exempted executive and judicial officers, the question was whether the plaintiff, a justice of the peace, was exempt. Holding that a justice of the peace was an officer, executive or judicial, or both, of the United States, the Court held plaintiff exempt from military jurisdiction. There was no question plaintiff was a justice of the peace. No administrative agency existed to decide questions of exemption. Nor does the case touch on the way the legal point there involved may be raised in time of national peril. In *Fire Department v. Gilmour*, 149 N. Y. 453 (and see *People v. McCoy*, 125 Ill. 289), also relied on by petitioner (Br. 35), the question involved could have been raised in no other way.

quiring that he report and then, if accepted, seek review of his classification in habeas corpus. This course effectuates the purpose and plan of the Act; the course which petitioner advocates would tend to destroy both. Considerations of due process, as applied to this problem, are given full effect if a remedy be available after the whole Selective Service process, including reporting and ultimate acceptance, has been completed. The military needs of the nation do not presently forbid such a remedy. Accordingly, the Government has not contested the availability of habeas corpus, after induction for military service or civilian service of national importance, to test whether the draft agencies have accorded due process.<sup>20</sup> Consideration for the rights of the individual in relation to the public interest in time of national peril, and for the integrity of the Congressional scheme, requires no more; individual rights do not require that the order to do service may be disobeyed with impunity, save perhaps under circumstances of complete absence of jurisdiction. The order to do service is not a penalty; it is a call to fulfill an obligation owed by the citizen. (Act of April 22, 1898, 30 Stat. 361, 10 U. S. C. 1.)

<sup>20</sup> The courts have held under the present Act that the registrant must obey the order and seek review in habeas corpus to test the validity of his classification. *United States v. Bowles*, 131 F. (2d) 818 (C. C. A. 3), affirmed on another ground, 319 U. S. 33; *United States v. Grieme*, 128 F. (2d) 811 (C. C. A. 3); *Fletcher v. United States*,

Our position is supported by every consideration relevant to the problem: the careful and comprehensive procedure prescribed by the Act and regulations for the classification and selection of persons for military service and work of national importance, the practical requirements of the process, and considerations of orderly procedure, all impel the conclusion that a registrant may not choose to defy an order to report of which he has notice merely because he thinks that his classification is arbitrary. Review in habeas corpus after induction preserves the Congressional scheme, aids the great purposes of the Act, and at the same time affords protection against abuse. Due process requires no more.<sup>21</sup>

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129 F. (2d) 262 (C. C. A. 5); *United States v. Kauten*, 133 F. (2d) 703 (C. C. A. 2); *United States v. Mroz*, 136 F. (2d) 221 (C. C. A. 7). Cf. Mr. Justice Douglas, concurring, in *Hirabayashi v. United States*, *infra*, at p. 20. No circuit court of appeals has held contrary to our view, although in some cases, the courts assuming but not deciding that collateral attack in a criminal proceeding was permissible, have found no justification on the merits for judicial intervention. See *Seale v. United States*, 133 F. (2d) 1015 (C. C. A. 8); *Rase v. United States*, 129 F. (2d) 204, 207 (C. C. A. 6); *Chechinski v. United States*, 129 F. (2d) 461 (C. C. A. 6); *Buttacali v. United States*, 130 F. (2d) 172, 173 (C. C. A. 5); *Barley v. United States*, 134 F. (2d) 998 (C. C. A. 4); *Goff v. United States*, 135 F. (2d) 610 (C. C. A. 4); *Honaker v. United States*, 135 F. (2d) 613 (C. C. A. 4); cf. *Johnson v. United States*, 126 F. (2d) 242 (C. C. A. 8).

<sup>21</sup> "The Constitution as a continuously operating charter of government does not demand the impossible or the im-

*The statutory scheme.*—The Act, as we shall show in some detail (*infra*, pp. 35–37), creates a Selective Service System of local and appeal boards to determine who shall be exempted or deferred, and who shall be called. Section 10 (Appendix A, *infra*, pp. 81–82) provides that the decisions of the local boards shall be final, save as appeals within the System are authorized by the President. Section 11 (Appendix A; *infra*, pp. 82–83), in turn makes it a crime to disobey an order issued under the Act.

Petitioner would add exceptions to Section 10; he would have the section provide that the decision is final in requiring compliance only if supported by substantial evidence. And he would amend Section 11 to forbid disobedience only of orders which are ultimately found by the courts to be based upon such evidence. The text of the Act has not so provided. Whatever the exceptions which the courts have built upon statutory exemption from review,<sup>22</sup> we submit that at the least the finality provided by Section 10 protects Selective Service deferments from collateral attack in a criminal proceeding. This would seem to be

practical." Mr. Chief Justice Stone in *Hirabayashi v. United States*, No. 870, October Term, 1942, slip opinion, p. 17.

"Peacetime procedures do not necessarily fit wartime needs." Mr. Justice Douglas, concurring in *Hirabayashi v. United States*, *supra*, slip opinion, p. 19.

<sup>22</sup> *Gegione v. Uhl*, 239 U. S. 3; *Silberschein v. United States*, 266 U. S. 221, 225; see Selective Service cases cited, footnote 41, *infra*, pp. 50–51.

made plain by the requirement of Section 11 that Selective Service orders must, without exception, be obeyed.

This conclusion is supported by the entire scheme of the Act and of the procedure provided for the classification of registrants. Analysis of the Act, its operation, the functions which must be performed under it, and the Selective Service regulations, establishes that its efficacy would be substantially impaired by the course which petitioner urges.

The Act requires all male citizens and all male persons residing in the United States, between the ages of 18 and 65, to register (Sec. 2). All such persons between 18 and 45 are liable for training and service in the armed forces (Sec. 3).<sup>23</sup> Men are to be selected for training and service, under such rules and regulations as the President may prescribe, from those who are liable and who are not deferred or exempted (Sec. 4). Section 5 (e) provides for exemption and deferment of certain groups; it also empowers the President to provide for the deferment of persons for occupational reasons, for physical reasons, or because of dependency, but all such deferments must be made upon an individual and not a group basis. Sec-

<sup>23</sup> Originally, the age limits were 21 to 36. The Act of December 20, 1941, 55 Stat. 844, Sec. 2, amended the age limits to 20 and 45. The Act was amended to its present form on November 13, 1942 (56 Stat. 1018).

tion 5 (g) provides for the relief of conscientious objectors from combatant training and service or from any military training and service (Appendix A, *infra*, pp. 79-81). Section 10 (Appendix A, *infra*, pp. 81-82) authorizes the President to create a Selective Service System; the President is directed to provide for classification of registrants and to establish within the Selective Service System civilian local boards and such other civilian agencies, including appeal boards and agencies of appeal, as may be necessary. The local boards are to be composed of three or more members appointed by the President, and they are to have power to hear and determine, subject to administrative appeal, all questions or claims with respect to inclusion for, or exemption or deferment from, training and service of all individuals in their jurisdiction. The decisions of the local boards are final except where an appeal is authorized. Under Section 11 (Appendix A, *infra*, pp. 82-83), any person who knowingly fails or neglects to perform any duty required of him by the Act, or by its rules or regulations, shall, upon conviction in the district court, be fined not more than \$10,000, or imprisoned for not more than five years, or both.

Under the Act there have been established 6,442 local boards, the same number of appeal agents,<sup>24</sup> 274 appeal boards and 42 coordinate ap-

<sup>24</sup> An appeal agent may appeal from any classification by a local board in any case where he believes review is warranted; it is also his duty to assist ignorant registrants, and

peal boards.<sup>25</sup> As of August 31, 1943, the registrants under the Act totalled 43,195,972, of whom 29,192,859 were liable for military training and service (i. e., were between the ages of 18 and 45).<sup>26</sup> Since a classification is not permanent and is subject to being reopened at any time,<sup>27</sup> the process of classification is continuous. Thus, for example, between July 1, 1942 and July 1, 1943, 41,969,644 classification actions were taken on registrants, while 3,827,378 were taken in January 1943, alone. By September 1, 1943, 6,514,635 men had entered the armed services through the Selective Service System.<sup>28</sup>

The process of selection begins with registration and ends with acceptance by the armed forces or for work of national importance. The initial

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to suggest to the local board a reopening, or to make an investigation and submit information to the board, in any case where the interests of justice may require (Reg. 603.71). See Lewis, *Appeal Procedure Under the Selective Service Law* (1942), 17 Ind. L. J., 273, 275-278.

<sup>25</sup> Second Report of Director of Selective Service, 1941-42, *Selective Service in Wartime* (1943), p. 504. Each local board covers an area of, about 30,000 population, but there must be at least one separate local board in each county. Regulation 603.51. The average number of registrants per local board in the first and second registrations was 2,757, varying from one board with 57 registrants to one with 8,709. *Selective Service in Peacetime*, pp. 59-61.

Each appeal board shall cover not more than 70,000 registrants. Regulation 603.21.

<sup>26</sup> Figures compiled from Selective Service records.

<sup>27</sup> See Sec. 5 (h) of the Act; Regulation 626.1.

<sup>28</sup> Figures compiled from Selective Service records.

step after registration is the registrant's receipt (if he is between the ages of 18 and 45), filling out, and return to the local board of the questionnaire, which petitioner executed on August 23, 1941.<sup>29</sup> The registrant is entitled to present all written information which he believes necessary to assist the local board in determining his classification; this information is to be included in or attached to the questionnaire. (Reg. 621.4).<sup>30</sup> There is a space on the questionnaire in which a registrant may make his claim to be a conscientious objector (see R. 56); if he so claims, he is furnished a special form to substantiate his claim, and this form becomes a part of the questionnaire (Reg. 621.3).

Upon receipt of the questionnaire, the local board proceeds to classify the registrant solely upon the basis of the written information in his file (Reg. 623.1, 623.2). Unless placed in certain deferred classes, the registrant is then physically examined by local board examining physicians.<sup>31</sup>

<sup>29</sup> R. 58. For the method of determining the order in which registrants shall receive their questionnaires, see *Selective Service in Peacetime*, pp. 89-99.

<sup>30</sup> This Regulation and each other one hereinafter referred to are set forth in Appendix B, *infra*, pp. 84-117.

<sup>31</sup> Since January 1, 1942, this physical examination has been cursory, and designed to eliminate only those visibly unfit (See Reg. 623.33). In the case of a registrant called for military service the main examination is conducted at the induction station upon reporting for induction. See, *infra*, pp. 43, 54. A registrant finally classified in Class IV-E as a conscientious objector is given a final type physical examina-

A registrant claiming to be a conscientious objector (Class IV-E or I-A-O)<sup>32</sup> is in any event examined at this point (Reg. 623.21, 623.31), and his claim is not passed upon unless it appears upon this preliminary physical examination that he is physically fit for service (Reg. 623.51 (c)).

Thereafter, the registrant receives a notice of the classification by the local board (Reg. 623.61). Upon receipt of such notice, the registrant may, upon written request within ten days, ask for an appearance before the local board (Reg. 625.1). If request is made, time for appeal is stayed (Reg. 625.2 (e)), and the local board must send a notice of time and place for the appearance, at which the registrant may submit such additional information and make such additional presentation as he wishes. All such information must be reduced to writing and placed in the registrant's file (Reg. 625.2).

If the registrant's requested classification is denied, he may appeal (Reg. 625.2 (e), 627.2 (a)). In addition, the Director of Selective Service, the State Director of Selective Service, or the government appeal agent may also appeal from the local board determination (Reg. 627.1 (a), 627.2 (a)).

tion at an induction station before he is assigned to work of national importance (Reg. 651.1); see *infra*, pp. 44-56.

<sup>32</sup> A registrant found to have conscientious objections to all military service is placed in Class IV-E; one found to object to combatant service only is classified I-A-O. Regs. 622.12, 622.51.

The appeal results in a *de novo* consideration by the appeal board. Appeal is taken by filing a written notice, or by signing the "Appeal to Board of Appeal" upon the questionnaire (Reg. 627.11); the registrant may attach to his appeal a statement of the respects in which he believes the local board erred, may direct attention to any information in his file which he believes the local board failed to consider or give sufficient weight, and may set out in full any information which was offered to the local board and which that board failed or refused to include in his file (Reg. 627.12). If the information is not sufficient to enable the appeal board to determine the registrant's classification, the file is returned to the local board with proper instructions (Reg. 627.23). In transmitting the file to the appeal board the local board "should be careful to avoid the expression of any opinion concerning information in the registrant's file and should refrain from including any argument in support of its decision" (Reg. 627.13 (a)). The taking of appeal automatically stays induction (Reg. 627.41).

A special procedure upon appeal is provided by Section 5 (g) of the Act (Appendix A, *infra*, pp. 79-81) and by Reg. 627.25 for persons who assert conscientious objections, and this procedure was followed in petitioner's case (see R. 58). The appeal board makes a preliminary examination of the file to determine whether the regis-

trant should be placed in a deferred or exempted class other than the conscientious objector class. If it decides that he should not be so placed, the board of appeal must transmit the file to the local United States Attorney. The Department of Justice must then make an inquiry and hold a hearing, of which the registrant is given notice, on the character and good faith of the registrant's conscientious objections. Upon the basis of such inquiry, the Department submits a report and its recommendations to the appeal board. Under Section 5 (g) of the Act, as well as the regulations (627.25 (c)), the appeal board must give consideration to, but is not bound by, the recommendation of the Department of Justice.

The appeal board then makes its classification and returns the case to the local board (Reg. 627.26, 627.27), which notifies the registrant of the appeal board's action (Reg. 627.31). The decision of the appeal board may, however, be subject to further appeal upon certain conditions. Appeals as of right to the President may now be taken by the registrant in any case where he is classified as available for military service (I-A) or as a conscientious objector (I-A-O or IV-E) and one or more members of the board of appeal dissented from the classification (Reg. 628).<sup>33</sup>

<sup>33</sup> At the time of petitioner's classification, appeals as of right were limited to dependency cases in which there was a dissent. In this case, the action of the appeal board was unanimous (R. 58), and petitioner did not claim dependents.

In addition, in any other case, the State Director of Selective Service or the Director of Selective Service may appeal, if either "deems it to be in the national interest or necessary to avoid an injustice." Reg. 628.1.<sup>34</sup> If such appeal is taken, the registrant is notified; he is also notified of the President's decision (Reg. 628.4 (a), 628.6). Appeal to the President stays induction (Reg. 628.7).

If the registrant is classified I-A, and the local board determines that he shall report, he is sent an Order to Report for Induction (Reg. 633.1). Section 3 of the Act, however, expressly provides that—

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<sup>34</sup> Petitioner's Selective Service file shows that in May 1942, subsequent to his hearing before the Department of Justice hearing officer but prior to his reclassification in Class IV-E by the appeal board (see R. 58), he communicated with National Headquarters of Selective Service claiming that he had been improperly classified and should have been placed in Class IV-D as a minister. On June 25, 1942, which was subsequent to petitioner's classification in Class IV-E by the appeal board, National Headquarters advised the Acting State Director of this and stated that petitioner's name was not on the "certified list of Jehovah's Witnesses" and that there was nothing in the correspondence which would warrant action by the Director of Selective Service. On the same date the Acting State Director advised petitioner of this communication from National Headquarters and of the fact that the appeal board had unanimously classified him in Class IV-E. He also stated in his letter to petitioner that he had received the file and reviewed the facts of the case and that in his opinion they did not "warrant an appeal to the President;" he accordingly declined to take such an appeal.

\* \* \* no man shall be inducted for training and service under this Act unless and until he is acceptable to the land or naval forces for such training and service and his physical and mental fitness for such training and service has been satisfactorily determined: \* \* \*

Accordingly, the registrant is, upon reporting at the induction station, subjected to a final physical and mental examination.<sup>35</sup> Only the selected men who are found acceptable in such examination are inducted into the armed forces (Reg. 633.9). Upon receiving notice that a registrant has been found acceptable and has been inducted, the local board places him in I-C; if he is not accepted because of unfitness, he is placed in IV-F (Reg. 633.13; see Reg. 633.10 (c)). It is not until after this step is taken that the Selective Service classification is complete.

Even after induction, however, the individual who may have been erroneously classified and inducted is not without administrative remedy. By War Department Circular No. 270, December 27, 1941, it was provided that if a man was erroneously inducted because of the denial of "some legal right" in the course of the procedure leading up to induction, he would be separated from service upon his written request and after report and recommendation of the individual's local

<sup>35</sup> *Selective Service in Peacetime*, pp. 132, 209; see *infra*, p. 54.

board and of the State Director of Selective Service. Under Army Regulations 615-360, an individual may also be discharged if he is "inapt" or if he "does not possess the required degree of adaptability for the military service after reasonable attempts have been made to reclassify or reassign" him (Par. 51).<sup>36</sup>

If the registrant is classified IV-E as a conscientious objector to both combatant and non-combatant military service the procedure for assignment to work of national importance is somewhat different. In that case, when his order number is reached in the process of selecting I-A and I-A-O registrants to report for induction into the armed forces, the registrant is summoned for a final type physical examination at the induction station in the same manner as that conducted for other selected men (Reg. 651.1-651.8). If the report of the examination indicates that he is physically and mentally qualified for service, the local board notifies the Director of Selective Service that he is acceptable for work of national importance (Reg. 651.10 (a), 652.1). The Director then assigns the registrant to a camp and upon receipt of such assignment the local board issues an order to the registrant to report for work of national importance (Reg. 652.2, 652.11; see R. 59) and it is his duty to comply with the order (Reg. 652.11).

<sup>36</sup> Under Selective Service Regulation 653.16, similar discharges may be granted to registrants assigned to work of national importance.

It will thus be seen that the task of selection is an enormous undertaking, and that the procedure is comprehensively designed from beginning to end to provide maximum safeguards against error.

Were the procedures of selection haphazard and incomplete, and lacking in substantial assurance against error in classification, it might more persuasively be argued that an order to report for induction or for work of national importance should impose no obligation to respond. The situation is otherwise, however, where, as here, the procedure is elaborate and complete, creating the strongest likelihood that the final classification is correct. In these circumstances, we submit that a registrant may fairly be put to the duty, as the statute requires, of responding to an order so made.

*The importance of preserving the administrative process.*—The conclusion that the process of selection should not be interrupted until its completion is supported by strong practical considerations as well as by the statutory scheme. As we have noted, the task of classifying registrants is enormous, yet no governmental function more imperatively requires expedition and freedom from harassing litigation than the function of raising military forces in time of war. The procedure of judicial review in a criminal prose-

cution which petitioner insists upon would, we submit, obstruct that function and be fruitful of crippling delays. In this very case petitioner was originally classified as available for military service by his local board on January 19, 1942; he was not finally classified, after appeal, and ordered to report for work of national importance until September 2, 1942 (R. 58, 59), and more than one year has elapsed since he was scheduled to report. The fact that his claim of conscientious objection was sustained on appeal and he was therefore not subject to induction into the armed forces is of no moment, for the same procedure would be open to those registrants who are selected for induction. It would seem clear that in either event completion of the processes contemplated by the statute and regulations, and the summary remedy of habeas corpus, provides a more clear-cut and expeditious procedure.

For, if armed forces are to be effectively raised as the peril demands, a registrant who believes his classification unlawful must not be permitted to attack it from a position where, if he fails, he goes to jail instead of into the armed services. A man in jail is of no use to his country's defense.<sup>37</sup> It is of particular importance that one who is

<sup>37</sup> Cf. testimony of Secretary of War Baker, Hearings before House Committee on Military Affairs on the Selective Service Act of 1917, 65th Cong., 1st Sess., p. 81: "We cannot afford to allow a man the alternative" of prison or service.

called up respond promptly. As this Court stated in *Houston v. Moore*, 5 Wheat. 1, 35:

\* \* \* the honor and peculiar safety of a particular state may so often be dependent upon the alacrity with which her citizens repair to the field, that the most serious mortifications and evils might result, from refusing the right of lending the strength of the state authority to quicken their obedience to the calls of the United States.

Practical necessity withholds permission from a registrant to disregard an order to report because he thinks the order is wrong, putting the burden upon the Government to seek him out and proceed against him. The order to report must be obeyed; for, as Mr. Justice Story said (*Martin v. Mott*, 12 Wheat. 19):

The power [to call up a militia] thus confided by congress to the president, is, doubtless, of a very high and delicate nature. \* \* \* If it be a limited power, the question arises, by whom is the exigency to be judged and decided? Is the president the sole and exclusive judge whether the exigency has arisen, or is it to be considered as an open question \* \* \* equally open to be contested by every militiaman who shall refuse to obey the orders of the president? \* \* \* A prompt and unhesitating obedience to orders is indispensable to the complete attainment of the object. The service is a military service,

and the command, of a military nature; and  
 \* \* \* every obstacle to an efficient and  
 immediate compliance, necessarily tend to  
 jeopard the public interests. While subor-  
 dinate officers or soldiers are pausing to  
 consider whether they ought to obey, or  
 are scrupulously weighing the evidence of  
 the facts upon which the commander-in-  
 chief exercises the right to demand their  
 services, the hostile enterprise may be ac-  
 complished, without the means of resist-  
 ance. \* \* \* (Pp. 29-30.)

\* \* \* \* \*

The law contemplates that, under such cir-  
 cumstances, orders shall be given to carry  
 the power into effect; and it cannot, there-  
 fore, be a correct inference, that any other  
 person has a just right to disobey them.

\* \* \* It is no answer, that such a  
 power may be abused, for there is no power  
 which is not susceptible of abuse. \* \* \*

(Pp. 31-32.)<sup>38</sup>

Petitioner's assertion (Br. 66) that the order to  
 report was void and imposed no duty cannot pre-  
 vail. It is a familiar part of our law that an  
 administrative order, even if it may be erroneous  
 and ultimately superseded by the judiciary, may  
 nevertheless not be void and without legal force.  
*Cf. Texas and Pacific Ry. v. Abilene Cotton Oil*  
*Co.*, 204 U. S. 426, 440-441; *Myers v. Bethlehem*

<sup>38</sup> Cf. *McCull's Case*, 5 Phila. (Pa.) 259 (1863), in which  
 it was stated (p. 261) that "drafting would not [be] effectual  
 without a power to compel the attendance of those drafted."

*Shipbuilding Corp.*, 303 U. S. 41; *Endicott Johnson Corp. v. Perkins*, 317 U. S. 501; *Piuma v. United States*, 126 F. (2d) 601 (C. C. A. 9), certiorari denied, 317 U. S. 637; *Inghram v. Union Stockyards Co.*, 64 F. (2d) 390 (C. C. A. 8); *Lehigh Valley R. Co. v. United States*, 188 Fed. 879 (C. C. A. 3).<sup>39</sup>

An order to report for induction, like other interlocutory administrative orders, may not be disregarded even though it may be erroneous. Thus, under the 1917 Act, it was held that where the draft board which ordered a registrant to report had jurisdiction over the registrant, defiance of the order constituted desertion<sup>40</sup> even though the registrant was not fairly heard by the draft board. For, "Although based on irregular proceedings, it was not void. Until vacated, it was binding on the petitioner." *Ex Parte Romano*, 251 Fed. 762, 764 (D. Mass.); *Ex Parte Tinkoff*, 254 Fed. 912

<sup>39</sup> Similarly, an injunction, even though legally erroneous, nevertheless may attain such validity as to require compliance. *Howat v. Kansas*, 258 U. S. 181, 189-190; *McLeod v. Majors*, 102 F. (2d) 128, 129 (C. C. A. 5); *Locke v. United States*, 75 F. (2d) 157, 159 (C. C. A. 5); see *McAnn v. New York Stock Exchange*, 86 F. (2d) 211, 214 (C. C. A. 2), certiorari denied, 299 U. S. 603. And a prisoner in a penal institution under an irregular and voidable sentence is not entitled to attack the sentence by escape from prison; if he does, despite the illegality of his imprisonment, he has committed a criminal offense. *Aderhold v. Soileau*, 67 F. (2d) 259 (C. C. A. 5).

<sup>40</sup> See, *supra*, p. 28, for the 1917 Act procedure; cf. *United States v. Bullard*, 290 Fed. 704, 707 (C. C. A. 2), certiorari denied, 262 U. S. 760.

(D. Mass.); see cases cited *supra*, p. 28. Similarly, a registrant who was inducted could not thereafter desert and attack the validity of his induction upon court martial for desertion. *Ex parte Kerekes*, 274 Fed. 870 (E. D. Mich.); cf. *Aderhold v. Soileau*, 67 F. (2d) 259 (C. C. A. 5).<sup>41</sup>

<sup>41</sup> Although perhaps varying in their views concerning the precise subjects and scope of review, the courts have uniformly indicated, in cases arising out of the Civil War draft act, the 1917 draft act, and the present act, that habeas corpus after induction is appropriate to test the validity of actions of the draft boards. E. g. 1863 draft act: *Stingle's Case*, Fed. Cas. No. 13458 (E. D. Pa.); 1917 act: *Arbitman v. Woodside*, 258 Fed. 441 (C. C. A. 4); *Ex Parte Hutfis*, 245 Fed. 798 (W. D. N. Y.); *United States v. Rauch*, 253 Fed. 814 (S. D. N. Y.); 1940 Act: *Rase v. United States*, 129 F. (2d) 204 (C. C. A. 6); *United States v. Grieme*, 128 F. (2d) 811 (C. C. A. 3); *United States v. Kauten*, 133 F. (2d) 703 (C. C. A. 2); *Micheli v. Paullin*, 45 F. Supp. 687 (D. N. J.); see cases collected in Bullock, *Judicial Review of Selective Service Board Classifications by Habeas Corpus* (1942), 10 Geo. Wash. L. Rev. 827, 829.

Some courts have indicated that review may be had in habeas corpus on the issues whether the boards had jurisdiction and afforded a registrant fair consideration. *Franke v. Murray*, 248 Fed. 865 (C. C. A. 8); *United States v. Heyburn*, 245 Fed. 360 (E. D. Pa.); *United States ex rel. Phillips v. Downer*, 135 F. (2d) 521 (C. C. A. 2); *Benesch v. Underwood*, 132 F. (2d) 430 (C. C. A. 6); *Application of Greenberg*, 39 F. Supp. 13 (D. N. J.); *United States ex rel. Filomio v. Powell*, 38 F. Supp. 183 (D. N. J.); *Micheli v. Paullin*, 45 F. Supp. 687 (D. N. J.); *In re Rogers*, 47 F. Supp. 265 (N. D. Tex.); *United States ex rel. Errichetti v. Baird*, 39 F. Supp. 388 (E. D. N. Y.); *United States ex rel. Cameron v. Embrey*, 46 F. Supp. 916 (D. Md.); cf. *Angelus v. Sullivan*, 246 Fed. 54 (C. C. A. 2); *Bullock, op. cit. supra*. Other courts have indicated that habeas corpus affords protection against a classification based upon a mistake of law. *Ex Parte Beales*,

*The consequences of being wrong are more severe under petitioner's position than under that of the Government.*—Petitioner's contention that the position of the Government is harsh is misconceived. For, we submit, the consequences to the registrant are less severe if he be required to report, even if he thinks the order is in fact unlawful, and seek relief in habeas corpus. To the registrant it means that if he is unsuccessful in his challenge to his classification he remains a member of the armed forces or a participant in work of national importance under civilian direction. The course which petitioner advocates, on the other hand, involves the hazard of conviction as a felon and the stigma of having evaded the obligation of service in a time of national peril. The comprehensive procedures of the Selective Service System, with provisions for appeal even to the highest executive authority, create the strongest likelihood that the ultimate classification is correct and that it would therefore be a rare case where the registrant could successfully show that his classification is without a basis in

252 Fed. 177 (S. D. Calif.); *United States v. Commanding Officer*, 252 Fed. 314 (D. N. J.); *United States v. Kinkad*, 248 Fed. 141 (D. N. J.), affirmed, 250 Fed. 692 (C. C. A. 3); *Ex parte Platt*, 253 Fed. 413 (E. D. N. Y.); *Stingle's Case*, Fed. Cas. No. 13458 (E. D. Pa.); *Ex parte Green*, 123 F. (2d) 862 (C. C. A. 2), certiorari denied, 316 U. S. 668; cf. *United States ex rel. Cascone v. Smith*, 48 F. Supp. 842 (D. Mass.); *United States ex rel. Phillips v. Downer*, 135 F. (2d) 521, 525 (C. C. A. 2).

evidence. Experience under the Act has proved this to be so. As of September 15, 1943, approximately 105 registrants have sought to be released in habeas corpus after induction on the ground that their classifications were arbitrary. In only three of these cases (*United States ex rel. Phillips v. Downer*, 135 F. (2d) 521 (C. C. A. 2); *Ex parte Stanziale*, 49 F. Supp. 961 (D. N. J.); *Application of Greenberg*, 39 F. Supp. 13 (D. N. J.)) did the courts find that the classifications were not supported by evidence, and in the *Stanziale* case the district court's decision was reversed by the Third Circuit on October 6, 1943.<sup>42</sup> In addition, in numerous criminal cases the courts, none of which has decided that collateral attack upon a

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<sup>42</sup> In only two additional cases have inducted men been discharged on habeas corpus. *United States ex rel. Bayly v. Reckford*, *United States ex rel. Berans v. Reckford*, heard and decided together by the District Court for the District of Maryland on August 16, 1943. These cases, however, did not involve any issue as to the registrants' classifications, but only a question as to whether they had been called for induction out of the proper order laid down in directions to local boards by the Director of Selective Service.

In addition to the *Stanziale* case, *supra*, reported cases in which registrants have unsuccessfully challenged their classifications in habeas corpus after induction, are: *Benesch v. Underwood*, 132 F. (2d) 430 (C. C. A. 6); *Ex parte Green*, 123 F. (2d) 862 (C. C. A. 2), certiorari denied, 316 U. S. 668; *Micheli v. Paullin*, 45 F. Supp. 687 (D. N. J.); *In re Rogers*, 47 F. Supp. 265 (N. D. Texas); *United States ex rel. Broker v. Baird*, 39 F. Supp. 392 (E. D. N. Y.); *United States ex rel. Cameron v. Embry*, 46 F. Supp. 916 (D. Md.); *United States ex rel. Errichetti v. Baird*, 39 F. Supp. 388 (E. D. N. Y.); *United States ex rel. Filomio v. Powell*, 38

classification in a criminal prosecution is permissible, have found no justification on the merits for judicial intervention.<sup>43</sup> This experience shows that the path to judicial review which petitioner insists should be left open to the registrant leads him, however sincere may be his belief that his classification is arbitrary, almost inevitably to the penitentiary.

Remission of the registrant to his remedy by way of habeas corpus after induction, on the other hand, affords him protection against the abuse of power in the administrative process and at the same time effectuates the purpose of the Act expeditiously to raise military forces in sufficient number to meet the exigencies of war. For under this procedure the registrant is not lost to the military forces (which Congress has declared shall be raised, to such extent as may be necessary, in accordance with a fair and just system of selective compulsory training and service) and to that degree the national interest is not prejudiced in the event his complaint is judicially determined to be lacking in merit

F. Supp. 183 (D. N. J.); *United States ex rel. Pasciuto v. Baird*, 39 F. Supp. 411 (E. D. N. Y.); *United States ex rel. Ursitti v. Baird*, 39 F. Supp. 872 (E. D. N. Y.); *United States ex rel. Cascone v. Smith*, 48 F. Supp. 842 (D. Mass.); *Ex parte Robert*, 49 F. Supp. 131 (N. D. Calif.).

<sup>43</sup> *United States v. Kauten*, 133 F. (2d) 703, 707 (C. C. A. 2); *Honaker v. United States*, 135 F. (2d) 613 (C. C. A. 4); *Goff v. United States*, 135 F. (2d) 610 (C. C. A. 4); *Barley v. United States*, 134 F. (2d) 998 (C. C. A. 4); *Buttecali v. United States*, 130 F. (2d) 172 (C. C. A. 5); *Rose v. United*

2. THE ORDER TO REPORT IS AN INTERLOCUTORY STEP IN THE SELECTIVE SERVICE PROCEDURE AND THEREFORE IS NOT THE APPROPRIATE POINT FOR AN ATTACK ON THE CLASSIFICATION

The description of the procedure set out above shows that the process of selection and entrance into the armed forces is not complete until induction. *United States v. Kauten*, 133 F. (2d) 703 (C. C. A. 2). Even under the original system of medical examination, when the local board's examiners made a thorough examination, over ten percent of the registrants passed as physically fit by the Selective Service boards were rejected at the induction station.<sup>44</sup> The procedure was changed early in 1942, so as to provide for only cursory or "screening" examinations by the local boards,<sup>45</sup> so that at the present time about 40 percent of those reporting for induction are rejected upon physical examination and before actual induction.<sup>46</sup>

Since, therefore, the Army's determination of the registrant's qualifications for service, and the notice of that determination, are indispensable

*States*, 129 F. (2d) 204 (C. C. A. 6); *Czecinski v. United States* (3 cases), 129 F. (2d) 461 (C. C. A. 6); *United States v. Mroz*, 136 F. (2d) 221, 226-227 (C. C. A. 7); *Seele v. United States*, 133 F. (2d) 1015 (C. C. A. 8); *United States v. Newman*, 44 F. Supp. 817 (E. D. Ill.); *United States v. Kowal*, 45 F. Supp. 301 (D. Del.); *United States v. Pace* (2 cases), 46 F. Supp. 316 (S. D. Tex.).

<sup>44</sup> *Selective Service in Peacetime*, p. 209.

<sup>45</sup> See Note, *Classification—Physical Deferments* (1942), 17 Ind. L. J. 308, 312.

<sup>46</sup> Information compiled from records of Selective Service.

steps prerequisite to induction,<sup>47</sup> the administrative process is not completed when he is notified to report for induction.<sup>48</sup> Accordingly any infirmity in his classification does not injure a selectee until he has been accepted for service; an attack on the classification prior thereto is premature. *United States v. Kauten*, *supra*. Like other administrative orders, this order has real import just as does an order of the National Labor Relations Board or the Securities and Exchange Commission setting matters for hearing or investigation, or a subpoena of the Secretary of Labor commanding the production of books and records, or a valuation order of the Interstate Commerce Commission.<sup>49</sup> But since it is only an interlocutory step in the administrative process it is not yet reviewable. *United States v. Grieme*, 128 F. (2d) 811 (C. C. A. 3); *Fletcher v. United States*, 129 F. (2d)

<sup>47</sup> War Department Mobilization Regulations 1-7, Par. 13e; (1942) 91 U. of Pa. L. Rev. 366.

<sup>48</sup> The notice to report itself makes this clear (D. S. S. Form 150): It states that the registrant will proceed to the induction center and "You will there be examined and if accepted for training and service, you will then be inducted into the stated branch of the service. Persons reporting to the induction station in some instances may be rejected for physical or other reasons."

<sup>49</sup> *Myers v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41; *American Federation of Labor v. National Labor Relations Board*, 308 U. S. 401; *Mississippi Power & Light Co. v. Federal Power Commission*, 131 F. (2d) 148 (C. C. A. 5); *Endicott Johnson Corp. v. Perkins*, 317 U. S. 501; *United States v. Los Angeles & Salt Lake R. R.*, 273 U. S. 299.

262 (C. C. A. 5); *United States v. Kauten*, *supra*; cf. *Drumheller v. Berks County Local Board No. 1*, 130 F. (2d) 610 (C. C. A. 3); *United States v. Rauch*, 253 Fed. 814 (S. D. N. Y.). The selectee must await the end of the process and then seek his remedy if he then needs one.

This same factor of lack of finality is present, though to a less degree, in the case of a registrant who, like petitioner, is classified IV-E and ordered to report for work of national importance. For although, as we have seen (*supra*, p. 44), he receives the final type physical examination before being ordered to report, still the possibility remains that he may be rejected for such work upon reporting to the Civilian Public Service Camp. The regulations provide that if his physical condition has changed since his final type examination, the camp physician shall examine him and he may thereupon be rejected, in which event the local board must classify him IV-F (Reg. 653.11). Thus, as of October 15, 1943, of the 8,000 registrants who had reported at such camps, 610, or approximately 7 percent, were rejected.<sup>50</sup>

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In the light of the purposes of the Act, the plan adopted by Congress for their effectuation, the practical considerations arising out of the impera-

<sup>50</sup> Figures compiled from Selective Service records.

tive necessities of war, and the interlocutory nature of an order to report, we urge that, prior to actual induction, registrants must respond to orders directed to them, even if they think them plainly wrong. In view of the availability of habeas corpus as a means of vindicating any constitutional rights, the Court should, we respectfully submit, be reluctant to overturn the carefully devised statutory scheme.

C. Petitioner's offer of proof was insufficient to establish arbitrary or unfair action of the administrative boards

Even if the trial judge had jurisdiction to inquire into the question whether the Selective Service agencies gave petitioner a fair hearing and acted on evidence, petitioner's offer of proof was insufficient to open this question. Petitioner did not offer any evidence tending to show a refusal by the appeal board, by which the ultimate classification was made, to consider his case fairly, nor did he offer in evidence his entire Selective Service file, on which the administrative determination was based.

*The attack on the fairness of the boards.*—Petitioner's proffered evidence (R. 33) was, in the circumstances of this case, irrelevant and insufficient. The record shows that the ultimate administrative decision in respect of petitioner's classification was made, not by the local board, but

by the *board of appeal*. Upon petitioner's appeal from the local board's I-A classification, the appeal board on January 24, 1942, classified him in Class I-A, "subject to question of conscientious objection" (R. 58). In accordance with the special procedure upon appeal provided by Section 5 (g) of the Act and Regulation 627.25 for registrants who claim exemption as conscientious objectors, the appeal board on the same date referred petitioner's case to the Department of Justice for an advisory recommendation concerning the character and good faith of his objections to participation in war (R. 58).<sup>51</sup> It is evident from this action of the appeal board that it considered and rejected petitioner's claim to exemption as a minister (see Reg. 627.25 (a)). Several months later, on June 17, 1942, the appeal board classified petitioner in Class IV-E (R. 58) as a conscientious objector.

The action of the appeal board in the Selective Service System is as we have shown (*supra*, pp. 39-41) essentially a *de novo* classification. Its classification is final, except where an appeal is taken to the President (Reg. 627.26 (b)). The classification of the appeal board is not a limited review but wholly supersedes the local board's classification. Accordingly, the decision of the local

<sup>51</sup> See *supra*, pp. 40-42, and pp. 71-79 of Brief for the United States in *Bowles v. United States*, 319 U. S. 33, for a description of the procedure on appeal by persons asserting conscientious objections.

board and any irregularity on its part in deciding a registrant's classification is without significance when his case has been decided by the appeal board.

Petitioner did not at the trial attack the procedure of the appeal board or attempt to show that it was prejudiced. His offer of proof in this regard was directed solely to the action of the local board in allegedly denying him a hearing and refusing to listen to documentary evidence concerning his status with the Watchtower Bible and Tract Society. His offer did not specify the precise nature of this evidence and he did not offer to prove that the local board refused to receive it or, what is more important, that it was not before the appeal board. On the contrary, the evidence admitted and offered at the trial indicates that all pertinent evidence relating to petitioner's ministerial status was before both the local board and the appeal board. In his Selective Service questionnaire and conscientious objector's form, petitioner gave the details of his standing with the Society and he attached to the form the Society's certificate that he was an "ordained minister of Jehovah God" (R. 67) and a lengthy statement of his own relating to Jehovah's Witnesses and his position among them and with the Society (R. 69-70). In addition, in his reply of September 8, 1942, to the local board's notice to him of suspected delinquency in failing to present himself for work

of national importance (R. 61), following his final classification by the appeal board in class IV-E, petitioner requested the local board to reconsider his case "and all of my documents which have been directly or indirectly forwarded to the Board because the Board has erred in classifying me in IV-E" (R. 62).<sup>52</sup>

Furthermore, even if the local board did refuse to receive material evidence, its action would not have foreclosed petitioner from presenting such evidence to the appeal board, for Regulation 627.12 provides that on his appeal the registrant "may attach to his notice of appeal or to the Selective Service Questionnaire (Form 40) a statement specifying the respects in which he believes the local board erred, may direct attention to any information in the registrant's file which he believes the local board has failed to consider or give sufficient weight, and *may set out in full any information which was offered to the local board and which the local board failed or refused to include in the registrant's file.*" [Italics supplied.] Thus it will be seen that an administrative remedy is expressly provided to protect against occurrences such as petitioner alleges. Petitioner did not

<sup>52</sup> It should be noted that the affidavits of other persons which petitioner sought to introduce at the trial are dated in May 1942 (R. 73-76), at the time his case was before the Department of Justice (see R. 58). They are marked as exhibits by the Hearing Officer of the Department and apparently were obtained for his consideration.

offer to prove that, assuming he was prevented from presenting evidence to the local board, he could not or did not take advantage of the remedy provided in Regulation 627.12. And, indeed, as we have noted, the record indicates that the material sought to be shown to the local board was considered by the appeal board.

In these circumstances, it is submitted that, even if procedural irregularities or prejudice are proper defenses to a criminal proceeding, the trial court's ruling excluding the proffered evidence was correct. There was no attempt to show that the appeal board acted arbitrarily or that in consequence of the local board's allegedly arbitrary action the appeal board did not have before it all pertinent evidence which petitioner had to offer. Hence, petitioner's offer of proof was insufficient to raise any question concerning the procedural fairness or impartiality of the effective administrative decision. Cf. *Bowles v. United States*, 319 U. S. 33, 35-36.

*The attack on the sufficiency of the evidence.*—Nor was petitioner's offer of proof sufficient to test whether the administrative boards acted upon evidence. As the appeal board made the ultimate classification and rejected petitioner's claim that he was a minister, presumably petitioner would have made an adequate offer of proof had he offered to prove that the appeal board did not act upon evidence. But he made no such offer.

Under the Regulations, petitioner was entitled to inspect his entire file. *Bowles v. United States, supra*, at p. 34. He was not denied this opportunity and, indeed, he was permitted to withdraw from the file and offer in evidence so much of it as he wished (R. 10, 15, 18, 20, 26, 61-77). But instead of offering the entire file in evidence, petitioner selected portions of it, presumably those favorable to himself, and offered them in evidence (R. 20, 61-77). This was manifestly insufficient to raise the issue. See *Miss. Valley Barge Co. v. United States*, 292 U. S. 282, 286; *Louisiana & P. B. Ry. Co. v. United States*, 257 U. S. 114, 116. Cf. *Tagg Bros. v. United States*, 280 U. S. 420, 443-444.

The reason for petitioner's failure to offer the entire file is apparent from the record. At the trial petitioner's theory of the case was that a *de novo* consideration of his classification by either the judge or the jury was required. The alleged arbitrariness of the local board was offered to dispel any weight that board's determination might have, but this was intended for the *de novo* hearing and not as an independent ground.

*The plea in abatement.*—Finally, the plea in abatement (R. 3-5) did not raise the issue, because it contained the same infirmities that appear in the offer of proof. Its first ground was that petitioner is a minister and the local board knew it (R. 3.) This contemplates a *de novo* judicial hearing, and more-

over refers only to the local board, not the appeal board. The second ground attacks the procedure of the local board and says nothing of the appeal board (R. 3-4). On its face the plea in abatement is without merit because when construed most favorably to petitioner it would assert that the local board, not the appeal board, made the classification sought to be questioned; but if this were so, petitioner would have failed to exhaust his administrative remedies and thus would be unable to seek any judicial relief from the classification. *Myers v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 50-51. And as the plea in abatement is silent regarding the action of the appeal board it cannot reasonably be construed as challenging the action of the appeal board as being without supporting evidence or based on a refusal to consider the matter fairly.

It is evident that petitioner was not concerned at the trial, and is not primarily concerned now, with obtaining a review by the trial judge of the Selective Service file to determine if the Selective Service agencies acted fairly and upon evidence. Petitioner has sought a *de novo* determination of his classification. As a consequence of the approach which his case has followed, the record would not put petitioner in a position to benefit even if the trial judge in the criminal proceeding did have jurisdiction to determine if the administrative boards acted fairly and upon evidence.

**D. Petitioner's charge that the Selective Service System has discriminated against Jehovah's Witnesses is unfounded**

Petitioner implies in his brief (see pp. 68-71, 74-85) that in respect of pioneers, at least, Jehovah's Witnesses have been discriminated against in the administration of the Act. Although his argument in this regard is not directly relevant to the legal issues presented, we feel compelled in these circumstances to set forth briefly the beliefs of Jehovah's Witnesses in respect of their rights and duties under the Act, the status of pioneers in relation to the general body of Witnesses, and the history of the efforts made by Selective Service, in attempted cooperation with the leaders of the movement, to accommodate the standards laid down in the Act to the beliefs and practices of the organization with a view to establishing workable principles for the guidance of the agencies of Selective Service. A statement of these matters will demonstrate that Selective Service has been solicitous in its efforts to secure to these registrants full protection of all the rights to which they are entitled and, indeed, that in recognizing the claims of the Watchtower Bible and Tract Society in respect of the ministerial status of certain individuals and groups within the organization, National Headquarters of Selective Service has been, if anything, overgenerous.

As early as October 4, 1940, less than three weeks after the enactment of the Selective Train-

ing and Service Act,<sup>53</sup> the Department of Justice, charged under the Act with duties regarding conscientious objectors, requested Mr. Hayden C. Covington, legal counsel of Jehovah's Witnesses, to furnish information regarding the Witnesses and their relationship to the draft. In response to this request Mr. Covington, in a letter to Mr. L. M. C. Smith, then Special Assistant to the Attorney General, dated October 9, 1940, submitted information which he said he had "obtained from the official publishers for Jehovah's Witnesses."<sup>54</sup> The letter stated that the Watchtower Bible and Tract Society, Inc., a New York corporation, and two other corporations<sup>55</sup> organized for the same purposes and having the same officers, are the "publishers for Jehovah's witnesses" which "print and manufacture literature used by" the Witnesses. Jehovah's Witnesses, as such, it was said, are not a corporation, but "are collectively the body of the organization formed by the Almighty God and over which Christ Jesus is the

<sup>53</sup> The Act was approved September 16, 1940 (54 Stat. 885).

<sup>54</sup> Mr. Covington's letter was published in the October 30, 1940, issue of "Consolation" (Vol. XXII, No. 551, pp. 24-30), the Watchtower Bible and Tract Society's biweekly magazine. A copy of this issue is contained in petitioner's Selective Service file, and although it is detached, petitioner apparently submitted it to the local board along with his conscientious objector's form (see R. 63, 65).

<sup>55</sup> Watchtower Bible and Tract Society, a Pennsylvania corporation organized in 1884, and International Bible Students Association, incorporated in 1914 under the laws of Great Britain.

appointed Head and Chief." All persons who enter into a covenant "to do the will of Almighty God, and hence to follow in the footsteps of Christ Jesus," are witnesses for Jehovah, commissioned to transmit His message and to bear testimony before the people that His purpose is to establish the Theocracy. "the government of the world under the command of Jehovah God by and under the immediate direction of Christ Jesus the King." The identity and number of all such persons is unknown to man, and the Society does not keep a list of Witnesses because "no man or organization has authority to keep a roll showing who are or who are not Jehovah's Witnesses." The letter stated, however, that the Society and its affiliated corporations "have placed in the hands of the peoples of earth more than three hundred million volumes of books, published in eighty or more languages," thus implying that the number of Witnesses is great. The attitude of Jehovah's Witnesses toward war was said to be one of absolute neutrality; for the nations of the earth "are against God and His Kingdom"—the Theocracy—and therefore it was said that Jehovah's Witnesses are forbidden by God's will to engage in war between nations. It is for each Witness to determine for himself, however, whether he will claim conscientious objections to military service, since each must determine whether he is wholly devoted to God and His Kingdom. In respect of the standing of Wit-

nesses as ministers, it was said that all sincere persons who are devoted to Jehovah and have made a covenant to do His will and have been accepted by Him as such servants are possessed of scriptural ordination as "ministers or Witnesses of Almighty God." Each such person is recognized by the Society and the body of Witnesses to be an "ordained minister of God and Christ" with authority to represent the Society "as a minister and as a witness for Jehovah"; and he is given an identification card showing that he is "an ordained minister of the gospel."<sup>56</sup> This procedure, it was said, constitutes the "human ordination" of such person. The letter stated in conclusion that the Society has for more than 50 years maintained schools "for the instruction of students in the Divine Word" and that, in addition, companies or branch schools are maintained where each week any person who desires it may receive free instruction under the direction of "competent instructors, elders and ministers and servants."

In June 1941, following discussions between representatives of the Society and National Headquarters of Selective Service, the Society, at the request of General Hershey, submitted to National Headquarters a list of members of the Bethel family of Jehovah's Witnesses located at the Brooklyn offices of the Society and of pioneers who devoted substantially full time to the work

<sup>56</sup> See R. 67.

of Jehovah's Witnesses.<sup>57</sup> On June 12, 1941, National Headquarters issued Opinion No. 14 (Petitioner's Appendix, pp. 36-39) concerning the ministerial status of Jehovah's Witnesses. This opinion stated that the Witnesses were considered to constitute a recognized religious sect and that certain members of the group, "by reason of the time which they devote, the dedication of their lives which they have made, the attitude of other Jehovah's Witnesses toward them, and the record kept of them and their work" are placed "in a position where they may be recognized as having a standing in relation to the organization and the other members of Jehovah's Witnesses, similar to that occupied by regular or duly ordained ministers of other religions." Members of the organization at the Brooklyn factory and offices and at various farms who devote their full time and effort to the manufacture and production of books, pamphlets, and supplies for the religious benefit of the Witnesses (the Bethel family), were considered as having a standing in relation to the general body which brought them within the purview of the ministerial exemption of the Act (Sec. 5 (d)) and the opinion stated that such persons "may" be classified in IV-D, provided their names appeared on the "certified official list" transmitted to State Directors. In addition, members

<sup>57</sup> A copy of General Hershey's letter of June 10, 1941, to Mr. Covington requesting such lists was published in *Consolation* for July 9, 1941 (Vol. XXII, No. 569, p. 22).

who devoted all or a substantial part of their time to teaching the tenets of their religion and in converting others to their beliefs and who were recorded as pioneers by the Society, were considered as qualifying for the exemption if their names appeared on the official list. Other persons known as regional servants, zone servants, company servants, sound servants, advertising servants, and back-call servants were not listed and the opinion stated that their status as ministers within the meaning of the Act must be determined on an individual basis.

Following this, on June 25, 1941, National Headquarters transmitted to the State Directors of Selective Service the official list of members of the Bethel family and pioneers which had been furnished by the Society; the list contained the names of 951 men 36 years of age and under.<sup>68</sup>

Soon after the publication of the official list the Society began to make applications to National Headquarters to have the names of other registrants added to it. Between June 25, 1941, and January 16, 1942, 25 such applications were granted, while applications on behalf of 30 other

<sup>68</sup> At that time the age limits for military training and service were 21 to 36 (see footnote 23, *supra*, p. 35). The list was published in *Consolation* for July 9, 1941 (Vol. XXII, No. 569, pp. 26-27), along with Opinion No. 14 (pp. 23-25). A copy of this issue is contained in petitioner's Selective Service file. His name did not appear on the list. We have lodged a copy of the list with the Clerk.

individuals were denied, principally because the registrants involved were delinquent or had already been classified IV-D by their local boards. During the fall of 1941 and the first few months of 1942 efforts were made to reach an understanding with representatives of the Society concerning the number of pioneers who might appropriately be added to the list. In the course of these negotiations Mr. Covington advised National Headquarters by a letter dated January 27, 1942, that "no specified educational background is required of any individual precedent to admission to the pioneer ranks" and that "no specified time is required in study and preparation because of the varying ability of the different ones."<sup>59</sup> On March 30, 1942, however, Mr. Covington agreed to restrict future applications to those who had "a minimum of one year's active association with Jehovah's Witnesses, as well as a year or more continuous study of the Watch Tower publications."<sup>60</sup>

In the meantime, on January 8, 1942, the names of a number of registrants were removed from the official list upon the basis of information furnished by the Society. On February 20, 1942, National Headquarters transmitted to the State Directors a revised official list of pioneers and

<sup>59</sup> Compare p. 79 of petitioner's brief, and pp. 75-77, *infra*.

<sup>60</sup> Mr. Covington's letter of January 27, 1942, is copied in Appendix C, *infra*, pp. 122-125.

Bethel family members. This list contained the names of 790 men.<sup>61</sup>

At about the same time, National Headquarters instituted the practice of investigating through the local boards each new application submitted by the Society for addition to the official list and this practice was followed until the fall of 1942, when the volume of applications became so great that it was impossible to pass upon each one individually (see pp. 75-77, *infra*).<sup>62</sup> As a result of this, National Headquarters, after a conference with Mr. Covington, decided to discontinue the practice of adding names to the list. Accordingly, on October 29, 1942, the State Directors were advised that registrants whose names appeared on the list would remain in the status previously enunciated

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<sup>61</sup> A copy of this list has been left with the Clerk. Petitioner's name did not appear on this list. At that date his case was pending before the board of appeal (see R. 58). His Selective Service file contains a letter from the State Director to the chairman of the local board, dated May 18, 1942, which was two months prior to his classification in IV-E by the board of appeal, stating that National Headquarters had denied the Society's application to have petitioner's name added to the official list. The State Director added, however, that the fact that a registrant's name was not on the list was not conclusive and that his classification should be determined upon the facts of his case.

<sup>62</sup> It had previously been estimated, on the basis of information furnished by the Society as to the increase in the number of pioneers enrolled during the period 1935-1940, that an increase of from 50 to 80 new pioneers per year would not be disproportionate with the growth shown during that period. The number of applications submitted by the Society greatly exceeded National Headquarters' estimates.

but that no further additions would be made to the list. On December 17, 1942, National Headquarters forwarded to the State Directors a final and consolidated list of members of the Bethel family and pioneers. This list contained the names of 1,026 men.<sup>63</sup> In the meantime, on November 2, 1942, Opinion No. 14 of National Headquarters (see pp. 68-69, *supra*) was amended to eliminate the proviso that members of the Bethel family and pioneers might be classified IV-D, as ministers, if their names appeared on the official list. Reference was made in the amended opinion to the list and it was stated that registrants whose names appeared thereon "may" be classified IV-D, but in respect of members of the Bethel family and pioneers not on the list, their status, like that of members of Jehovah's Witnesses functioning in various other capacities, was to be determined on the facts of each case.<sup>64</sup>

When viewed against the background of the religious activities of Jehovah's Witnesses we think that the interpretation of the ministerial exemption as not precluding the exemption of any pioneers is a liberal one. All Jehovah's Witnesses affiliated with the Society are referred to in its literature as "publishers."<sup>65</sup> These

<sup>63</sup> We have also lodged a copy of this list with the Clerk.

<sup>64</sup> Opinion No. 14, as so amended, is also printed in the appendix to Petitioner's Brief, pp. 40-43.

<sup>65</sup> See, e. g., 1943 Yearbook of Jehovah's Witnesses, pp. 38-39.

persons are engaged in "witnessing" and the dissemination of religious literature published by the Society.<sup>66</sup> As we understand the organization of the Witnesses a pioneer differs from the rank and file Witnesses in that he must devote at least 150 hours per month to such work (see R. 36, 1942 Yearbook, p. 42). He enjoys special price concessions on literature published by the Society in order that he may earn enough to defray his expenses (see R. 36-37).<sup>67</sup>

Indeed, up to the year 1931, pioneers were called colporteurs (1932 Yearbook, p. 48; compare 1931 Yearbook, p. 66). The 1932 Yearbook explained the change in name on the ground that the definition of "colporteur"—one who travels about distributing or selling religious literature—did "not exactly fit 'Jehovah's witnesses,'" because they "are not engaged in a selling enterprise, nor are they merely distributing literature, but they are bearing testimony to the people in obedience to God's commandment" (p. 48). The same Yearbook described the relationship of pioneers to other Witnesses in terms of the amount of time devoted to field work. Pioneers, it stated, are those who devote full time to such work. "Next to them are the 'auxiliary' workers, who devote

<sup>66</sup> See *id.*, pp. 23, 27-29, 38-40; 1940 Yearbook, pp. 37-39; 1931 Yearbook, p. 66.

<sup>67</sup> The 1931 Yearbook stated (pp. 67-68) that the average "margin" of "pioneer colporteurs" dropped from \$0.46 per hour in 1929 to \$0.319 in 1930.

a part of their time to the field work; and then there are those who are members of a company in a community and who devote their evenings, Saturday afternoons and Sundays to the field service. It is all one company of 'Jehovah's witnesses,' but they are thus designated to distinguish the amount of time employed in the work" (pp. 48-49).

Although, as we have seen (*supra* p. 67), all Jehovah's Witnesses are deemed to be ministers, the Watchtower Bible and Tract Society has in the Yearbooks designated and recognized a limited number of specially qualified members as ordained ministers authorized to represent the Society. Each Yearbook for the period 1932-1943 has carried the names of such ministers.<sup>68</sup>

<sup>68</sup> Thus, the 1932 Yearbook stated, under the heading "Ordained Representatives" (p. 30):

"Ordination to preach the gospel of God's kingdom proceeds from Jehovah, and not from man; but it is strictly within the authority of the Society to select certain men and send them out to represent the Society in preaching the gospel in a more public way. Amongst those thus ordained by the Lord, and who were selected by the Society as its representatives and thereby ordained by the Society, the following are named:"

There followed a list of 243 such selected representatives.

The 1933 Yearbook described these representatives in the following language (p. 16):

"The Society, acting in harmony with the expressed word of the Lord, designates certain ones who appear to have reached maturity in Christ, and are therefore elders according to the Scriptures, as ministers ordained and sent forth to perform certain duties amongst the anointed and for the

While thus naming individually each such authorized minister, the Society in its Yearbooks merely refers to the number of pioneers engaged in field work each year. For the years 1932-1939 there was an over-all increase in the number of pioneers from 1,997 to 2,176.<sup>69</sup> By the end of 1940, however, the number of pioneers had increased to 3,879 (1941 Yearbook, p. 74). At the end of 1941 there were 5,463 pioneers. This unprecedented increase was described in the 1942 Yearbook as follows (p. 46):

people who desire to hear the truth. Among those who are thus ordained and sent forth are the following:"

This was followed by the names of 234 persons.

The Yearbooks for the ensuing years contain similar lists, as follows:

1934 Yearbook—225 persons (pp. 51-53).

1935 Yearbook—222 persons (pp. 49-51).

1936 Yearbook—231 persons (pp. 60-62).

1937 Yearbook—231 persons (pp. 73-74).

1938 Yearbook—240 persons (pp. 62-63).

1939 Yearbook—405 persons (pp. 77-79).

1940 Yearbook—426 persons (pp. 72-74).

1941 Yearbook—461 persons (pp. 60-62).

1942 Yearbook—438 persons (pp. 31-34).

1943 Yearbook—486 persons (pp. 18-22).

Petitioner's name appears nowhere in these lists carried in the Yearbooks.

<sup>69</sup> The number of pioneers in each of those years, as given in the Yearbooks, was as follows:

1932—1,997 (1933 Yearbook, p. 50).

1933—1,976 (1934 Yearbook, p. 43).

1934—1,976 (1935 Yearbook, p. 41).

1935—1,829 (1936 Yearbook, p. 53).

1936—1,831 (1937 Yearbook, p. 65).

1937—number not given.

*Pioneers.*—During the year a series of special letters were sent out to all companies, calling attention of the brethren to the wonderful privileges of service set before them in the full-time work. The response to the call to pioneer service was excellent. The campaign started in March, and month by month the ranks of the pioneers grew. The first month it increased by 103 pioneers; April, 127; May, 302; June, 307; and July, 464. In August almost everybody went to the convention, but there applications were filed for pioneer service by over 700. By the end of the year a grand total of 2,093 new pioneers had been enrolled. In closing the records of the Society at the end of the year it was found there are 5,463 actually enrolled in full-time service. This is the greatest number ever engaged in this field in the United States.

In the year 1942, 1,500 pioneers were designated as special pioneers, but there was also an average monthly increase of 421 in the number of pioneers (1943 Yearbook, p. 44), representing a total in-

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1938—1,910, including 247 special pioneers\* (1939 Yearbook, pp. 59, 69).

—1939—2,176, including 256 special pioneers (1940 Yearbook, pp. 56, 67).

\*The special pioneer group was established in 1937 to do "witness work" by means of phonographs and records (see 1938 Yearbook, pp. 51-52). At the present time, however, it appears that the qualification for a special pioneer is that he work 175 hours per month (see R. 35, 1943 Yearbook, p. 42).

crease during 1942 alone of 5,052 in the number of pioneers, an increase of nearly 100%. The 1943 Yearbook stated that at the convention held in September 1942 "The call went forth for 10,000 pioneers in the United States by next April; and, from the way the brethren have applied for pioneer service since this convention, it appears very likely that we shall have the 10,000 in the United States. Within four weeks after the convention ended 600 new applications for pioneer service had been received at the office" (p. 67).<sup>70</sup>

In the light of these facts we think it is evident that Selective Service has been scrupulously fair as regards Jehovah's Witnesses.<sup>71</sup> The task of

<sup>70</sup> This abnormal growth in the number of pioneers enrolled in the years 1940, 1941, and 1942 should be compared with the significant facts and dates in petitioner's case. He claimed to have been ordained in 1930, when he was 15 years old (R. 34, 56). From 1937 to 1939 he worked as a clothing salesman (R. 54). He became a pioneer on September 1, 1940 (R. 23, 36), approximately two weeks before the Act was approved, and a special pioneer on April 16, 1942 (R. 37), while his case was pending before the board of appeal (R. 58).

<sup>71</sup> In England Jehovah's Witnesses are not regarded as constituting a denomination within the meaning of the National Service (Armed Forces) Act, 1939, 2<sup>d</sup> and 3<sup>d</sup> Geo. VI, Ch. 81, which exempts from military service "regular minister(s) of any religious denomination" (Section 11), and, moreover, individual members of the cult are not considered to be regular ministers. We have copied in Appendix C, *infra*, pp. 118-121, a letter from Mr. G. Myrddin-Evans, an Undersecretary of the Ministry of Labour and National Service and the Assistant to the Director of Manpower, to the late Colonel Roy Dickinson, who was an as-

administration of the Act in relation to these registrants is, concededly, a difficult one. As stated in the Second Report of the Director of Selective Service "The attitude of the cult was plain. It wanted absolutely no part in the war—it claimed that under its doctrine and practice each and every member of the cult was a 'regular or duly ordained minister of religion'" (*Selective Service in Wartime*, p. 322).

#### CONCLUSION

For the foregoing reasons, we submit the decision below should be affirmed.

Respectfully submitted.

CHARLES FAHY,  
*Solicitor General.*

TOM C. CLARK,  
*Assistant Attorney General.*

ROBERT S. ERDAHL,  
VALENTINE BROOKES,  
*Special Assistants to the Attorney General.*

NOVEMBER 1943.

sistant executive in the office of the Director of Selective Service, which explains the status of Jehovah's Witnesses under the English act.

## APPENDIX A

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### STATUTORY PROVISIONS INVOLVED

The Selective Training and Service Act of 1940 (54 Stat. 885, 50 U. S. C. Appendix 301-318) provides, in part, as follows:

#### SEC. 5. \* \* \*

(d) Regular or duly ordained ministers of religion, and students who are preparing for the ministry in theological or divinity schools recognized as such for more than one year prior to the date of enactment of this Act, shall be exempt from training and service (but not from registration) under this Act.

\* \* \* \* \*

(g) Nothing contained in this Act shall be construed to require any person to be subject to combatant training and service in the land or naval forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Any such person claiming such exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the land or naval forces under this Act, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be assigned to

work of national importance under civilian direction. Any such person claiming such exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board provided for in section 10 (a) (2). Upon the filing of such appeal with the appeal board, the appeal board shall forthwith refer the matter to the Department of Justice for inquiry and hearing by the Department or the proper agency thereof. After appropriate inquiry by such agency, a hearing shall be held by the Department of Justice with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board (1) that if the objector is inducted into the land or naval forces under this Act, he shall be assigned to noncombatant service as defined by the President, or (2) that if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be assigned to work of national importance under civilian direction. If after such hearing the Department finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall give consideration to but shall not be bound to follow the recommendation of the Department of Justice together with the record on appeal from the local board in making its decision. Each person whose claim for exemption from combatant training and service be-

cause of conscientious objections is sustained shall be listed by the local board on a register of conscientious objectors.

\* \* \* \* \*

SEC. 10 (a). The President is authorized—

(1) to prescribe the necessary rules and regulations to carry out the provisions of this Act;

(2) to create and establish a Selective Service System, and shall provide for the classification of registrants and of persons who volunteer for induction under this Act on the basis of availability for training and service, and shall establish within the Selective Service System civilian local boards and such other civilian agencies, including appeal boards and agencies of appeal, as may be necessary to carry out the provisions of this Act. There shall be created one or more local boards in each county or political subdivision corresponding thereto of each State, Territory, and the District of Columbia. Each local board shall consist of three or more members to be appointed by the President, from recommendations made by the respective Governors or comparable executive officials. No member of any such local board shall be a member of the land or naval forces of the United States, but each member of any such local board shall be a civilian who is a citizen of the United States residing in the county or political subdivision corresponding thereto in which such local board has jurisdiction under rules and regulations prescribed by the President. Such local boards, under rules and regulations prescribed by the President, shall have power within their respective jurisdictions to hear and determine, subject to the right of appeal to the appeal boards herein au-

thorized, all questions or claims with respect to inclusion for, or exemption or deferment from, training and service under this Act of all individuals within the jurisdiction of such local boards. The decisions of such local boards shall be final except where an appeal is authorized in accordance with such rules and regulations as the President may prescribe.

\* \* \* \* \*

SEC. 11. Any person charged as herein provided with the duty of carrying out any of the provisions of this Act, or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said Act, rules, regulations, or directions who shall knowingly make, or be a party to the making, of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making of, any false statement or certificate as to the fitness or unfitness or liability or nonliability of himself or any other person for service under the provisions of this Act, or rules, regulations, or directions made pursuant thereto, or who otherwise evades registration or service in the land or naval forces or any of the requirements of this Act, or who knowingly counsels, aids, or abets another to evade registration or service in the land or naval forces or any of the requirements of this Act, or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect to perform any duty required of him under or in the execution of this Act, or rules or

regulations made pursuant to this Act, or any person or persons who shall knowingly hinder or interfere in any way by force or violence with the administration of this Act or the rules or regulations made pursuant thereto, or conspire to do so, shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than five years or a fine of not more than \$10,000, or by both such fine and imprisonment, or if subject to military or naval law may be tried by court martial, and, on conviction, shall suffer such punishment as a court martial may direct. No person shall be tried by any military or naval court martial in any case arising under this Act unless such person has been actually inducted for the training and service prescribed under this Act or unless he is subject to trial by court martial under laws in force prior to the enactment of this Act. Precedence shall be given by courts to the trial of cases arising under this Act.

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## APPENDIX B

### SELECTIVE SERVICE REGULATIONS

621.1 *Mailing questionnaires.*—(a) The local board shall mail a Selective Service Questionnaire (Form 40) to each registrant in strict accordance with the order numbers, from the smallest to the largest. Selective Service Questionnaires (Form 40) shall be mailed as rapidly as possible, consistent with the ability of the local board to give them prompt consideration upon their return.

\* \* \* \* \*

621.3 *Special form for conscientious objector.*—A registrant who claims to be a conscientious objector shall offer information in substantiation of his claim on a Special Form for Conscientious Objector (Form 47) which, when filed, shall become a part of his Selective Service Questionnaire (Form 40). The local board, upon request, shall furnish to any person claiming to be a conscientious objector a copy of such Special Form for Conscientious Objector (Form 47).

621.4 *Claims for, or information relating to, deferment.*—(a) The registrant shall be entitled to present all written information which he believes to be necessary to assist the local board in determining his proper classification. Such information should be included in or attached to the Selective Service Questionnaire (Form 40) and may include any documents, affidavits, or deposi-

tions. The affidavits and depositions shall be as concise and brief as possible.

\* \* \* \* \*

622.11 *Class I-A: Available for military service.*—In Class I-A shall be placed every registrant who, upon classification, has not been placed in Class I-C, Class IV-E, Class I-A-O, or in a deferred class.

622.12 *Class I-A-O: Available for noncombatant military service; conscientious objector.*—In Class I-A-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and to be conscientiously opposed to combatant military service in which he might be ordered to take human life, but not conscientiously opposed to noncombatant military service in which he could contribute to the health, comfort, and preservation of others.

\* \* \* \* \*

622.44 *Class IV-D: Minister of religion or divinity student.*—(a) In Class IV-D shall be placed any registrant who is a regular or duly ordained minister of religion or who is a student preparing for the ministry in a theological or divinity school which has been recognized as such for more than 1 year prior to the date of enactment of the Selective Training and Service Act (September 16, 1940).

(b) A "regular minister of religion" is a man who customarily preaches and teaches the principles of religion of a recognized church, religious sect, or religious organization of which he is a

member, without having been formally ordained as a minister of religion; and who is recognized by such church, sect, or organization as a minister.

(c) A "duly ordained minister of religion" is a man who has been ordained in accordance with the ceremonial ritual or discipline of a recognized church, religious sect, or religious organization, to teach and preach its doctrines and to administer its rites and ceremonies in public worship; and who customarily performs those duties.

\* \* \* \* \*

622.51 *Class IV-E: Available for work of national importance; conscientious objector.*—(a) In Class IV-E shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and to be conscientiously opposed to both combatant and noncombatant military service.

(b) Upon being advised by the Director of Selective Service that a registrant who was inducted into the land or naval forces for military service will be discharged because of conscientious objections which make him unadaptable to military service, the local board shall change such registrant's classification and place him in Class IV-E. The Director of Selective Service shall assign such registrant to work of national importance under civilian direction.

\* \* \* \* \*

623.1 *General principles of classification.*—(a) Each registrant shall be classified as soon as practicable after his Selective Service Questionnaire (Form 40) is received by the local board. \* \* \*

(b) It is the local board's responsibility to decide in the first instance the class in which each registrant shall be placed.

(c) In classifying a registrant there shall be no discrimination for or against him because of his race, creed, or color, or because of his membership or activity in any labor, political, religious, or other organization. Each registrant shall receive equal and fair justice.

623.2 *Information considered for classification.*—The registrant's classification shall be made solely on the basis of the Selective Service Questionnaire (Form 40), Affidavit of Dependent Over 18 Years of Age (Form 40A), Affidavit—Occupational Classification (General) (Form 42), or Affidavit—Occupational Classification (Industrial) (Form 42A), and such other written information as may be contained in his file; \* \* \*. Oral information should not be considered unless it is summarized in writing and the summary placed in the registrant's file. Under no circumstances should the local board rely upon information received by a member personally unless such information is reduced to writing and placed in the registrant's file.

\* \* \*

623.21 *Consideration of classes not requiring physical examination.*—(a) Upon undertaking to classify any registrant, it should first be determined whether he should be classified in Class I-C. If the registrant is not classified in Class I-C, it should next be determined whether he should be classified in Class IV-A.

(b) If the registrant is not classified in Class I-C or class IV-A under paragraph (a) of this

section, the local board shall next determine whether he should be classified in Class IV-C on the ground that he is a neutral alien who has filed DSS Form 301 or on the ground that there is no possibility of his being accepted for training and service because of his nationality or ancestry. Otherwise no consideration will be given to Class IV-C at this time.

(c) If the registrant is not classified in Class I-C or Class IV-A under paragraph (a) of this section and is not classified in Class IV-C under paragraph (b) of this section, consideration shall next be given to the following classes in the order listed, and the registrant shall be classified in the first class for which grounds are established:

Class IV-D.

Class IV-B.

Class III-C.

Class III-A.

Class II-C.

Class II-B.

Class II-A.

(d) If the registrant is not classified in one of the classes set forth in paragraph (a), (b), or (c) of this section, and, under the provisions of section 622.61, he is completely disqualified morally and there is no possibility that a waiver of such moral disqualification can be secured, he shall be classified in Class IV-F (moral). Otherwise no consideration will be given to Class IV-F at this time.

(e) If the registrant is not classified in one of the classes set forth in paragraphs (a), (b), (c), or (d) of this section, consideration shall next be

given to whether he qualifies for classification in Class III-D.

\* \* \* \* \*

623.31 *Notice to registrant to appear for physical examination.*—(a) If a registrant has not been placed in one of the classes set forth in section 623.21 the local board, as soon as practicable after the determination of that fact, shall mail to him a Notice to Registrant to Appear for Physical Examination (Form 201). This notice shall fix the date, time, and place for the registrant to report for such physical examination, normally 5 days after the date of mailing of such notice.

(b) On the day and at the time and place fixed in the Notice to Registrant to Appear for Physical Examination (Form 201), the registrant shall appear before the examining physician and submit to physical examination.

\* \* \* \* \*

623.33 *Physical examination by examining physician.*—(a) The Director of Selective Service, from time to time, will issue a List of Defects (Form 220), which will set forth defects which manifestly disqualify the registrant for military service.

(b) A registrant shall personally appear before the examining physician and shall be examined in the manner provided in paragraph (c) of this section except when the examining physician or the local board is convinced that the appearance of the registrant for physical examination before the examining physician will be injurious to the registrant's health or the health of those who might be brought in contact with him. When the

registrant appears before the examining physician, his physical examination should be held in a well-lighted, well-heated place. It should be held while the registrant is in the nude.

(c) The physical examination should consist of observing the registrant while walking toward, standing before, and walking away from the examining physician. The registrant may be required to go through calisthenics to determine the mobility of joints or to furnish a basis for determination of his alertness, intelligence, understanding of commands, postural tensions, tendencies to incoordination, and tremors. If peculiarities are noted, simple questions should be asked in an effort to bring out replies bearing on the mental health and personality characteristics of the registrant. The examining dentist, or if he is not available, the examining physician, will examine the mouth of the registrant. The examining physician will take blood from the registrant for a serological test. The blood specimen will be collected in a container furnished by the State health officer and will be forwarded to the State laboratory or other laboratory designated by the State Director of Selective Service, together with the accomplished form prescribed within the State for such purpose. If the report on the first serological test of the registrant is other than truly negative, the examining physician shall take additional blood for further serological tests until he is satisfied that the blood is truly negative, truly doubtful, or truly positive. Additional blood for further serological tests will not be taken if distance or circumstances over which the local board or the registrant has no control make it imprac-

licable for additional tests to be taken. Serological tests will be accomplished without expense to the Selective Service System, unless such expense is specifically authorized by the Director of Selective Service. No other laboratory procedures will be undertaken as a part of this physical examination.

(g) The examining physician shall enter in Item 24 on the Report of Physical Examination and Induction (Form 221) the result of the serological tests as "Truly Negative," "Truly Doubtful," or "Truly Positive."

(h) The examining physician will enter in Item 25 on the Report of Physical Examination and Induction (Form 221) any pertinent remarks which he deems advisable for the benefit of the examiners at the induction station.

(i) The examining physician, in Item 26 on the Report of Physical Examination and Induction (Form 221), shall complete the answer to the following question:

Do you find that the above-named registrant has any of the defects set forth in the List of Defects (Form 220)?

If the examining physician's answer is "Yes," he shall describe the defects in order of their significance. If the examining physician entertains a doubt as to whether he should answer "Yes" or "No," his answer shall be "No." No other information should be included under Item 26.

623.51 *Procedure for classification after physical examination.*—(a) After physical examination, the report of the examining physician shall be

considered, and the registrant shall be classified in the manner hereinafter provided.

(b) If the registrant is found to have a defect set forth in the List of Defects (Form 220) as manifestly disqualifying him for military service, he shall be classified in Class IV-F.

(c) If the registrant has made a claim that he is a conscientious objector and if such registrant has not been classified in Class IV-F as provided in (b) above, it shall be determined whether such registrant, by reason of religious training and belief, is conscientiously opposed to participation in war in any form, and, if he is, whether he is conscientiously opposed to both combatant and noncombatant military service or is opposed to combatant military service only. When this determination has been made, classification will continue in the manner hereinafter provided.

(d) Deleted.

(e) If the registrant has not been classified in Class IV-F in the manner provided in paragraph (b) of this section, he shall be classified in Class I-A; provided that: (1) If such registrant has been found to be a conscientious objector to combatant military service but not a conscientious objector to noncombatant military service, he shall be classified in Class I-A-O; or (2) if such registrant has been found to be a conscientious objector to both combatant and noncombatant military service, he shall be classified in Class IV-E.

\* \* \* \* \*

625.1 *Opportunity to appear in person.*—(a) Every registrant, after his classification is determined by the local board (except a classification which is itself determined upon an appearance

before the local board under the provisions of this part), shall have an opportunity to appear in person before the member or members of the local board designated for the purpose if he files a written request therefor within 10 days after the local board has mailed a Notice of Classification (Form 57) to him. Such 10-day period may not be extended, except when the local board finds that the registrant was unable to file such request within such period because of circumstances over which he had no control.

(b) No person other than the registrant may request an opportunity to appear in person before the local board.

\* \* \* \* \*

625.2 *Appearance before local board.*—(a) At the time and place fixed by the local board, the registrant may appear in person before the member or members of the local board designated for the purpose. The fact that he does appear shall be entered in the proper place on the Classification Record (Form 100). If the registrant does not speak English adequately, he may appear with a person to act as interpreter for him. No registrant may be represented before the local board by an attorney.

(b) At any such appearance, the registrant may discuss his classification, may point out the class or classes in which he thinks he should have been placed, and may direct attention to any information in his file which he believes the local board has overlooked or to which he believes it has not given sufficient weight. The registrant may present such further information as he believes will assist the local board in determining

his proper classification. Such information shall be in writing or, if oral, shall be summarized in writing and, in either event, shall be placed in the registrant's file. The information furnished should be as concise as possible under the circumstances. The member or members of the local board before whom the registrant appears may impose such limitations upon the time which the registrant may have for his appearance as they deem necessary.

(c) After the registrant has appeared before the member or members of the local board designated for the purpose, the local board shall consider the new information which it receives and shall again classify the registrant in the same manner as if he had never before been classified, provided that, if he has been physically examined by the examining physician, the Report of Physical Examination and Induction (Form 221) already in his file shall be used in case his physical or mental condition must be determined in order to complete his classification.

(d) After the registrant has appeared before the member or members of the local board designated for the purpose, the local board, as soon as practicable after it again classifies the registrant, shall mail notice thereof on the Notice of Classification (Form 57) to the registrant and on Classification Advice (Form 59) to the persons entitled to receive such notice or advice on an original classification under the provisions of section 623.61.

(e) Each such classification shall be followed by the same right of appeal as in the case of an original classification.

626.1 *Classification not permanent.*—(a) No classification is permanent.

(b) Each classified registrant shall, within 10 days after it occurs, and any other person should, within 10 days after knowledge thereof, report to the local board in writing any fact that might result in such registrant being placed in a different classification.

(c) The local board shall keep informed of the status of classified registrants. Registrants may be questioned or physically or mentally reexamined, employers may be required to furnish information, police officials or other agencies may be requested to make investigations, and other steps may be taken by the local board to keep currently informed concerning the status of classified registrants.

626.2 *When registrant's classification may be reopened and considered anew.*—(a) The local board may reopen and consider anew the classification of a registrant (1) upon the written request of the registrant, the government appeal agent, any person who claims to be a dependent of the registrant, or any interested party in a case involving occupational deferment, if such request is accompanied by written information presenting facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification; or (2) upon its own motion if such action is based upon facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification; provided, in either event, the classification of a registrant shall not be reopened after the local board has mailed to such registrant an

Order to Report for Induction (Form 150) unless the local board first specifically finds there has been a change in the registrant's status resulting from circumstances over which the registrant had no control.

(b) At any time before the induction of a registrant, the local board shall reopen and consider anew such registrant's classification upon the written request of the State Director of Selective Service or the Director of Selective Service.

\* \* \* \*

627.1 *Who may appeal any determination of a local board to a board of appeal at any time.*—(a) Either the State Director of Selective Service or the Director of Selective Service may appeal from any determination of a local board.

(b) Either the State Director of Selective Service or the Director of Selective Service may take such an appeal at any time.

627.2 *Who may appeal registrant's classification to board of appeal under certain circumstances.*—(a) The registrant, any person who claims to be a dependent of a registrant, any person who has filed written evidence of the occupational necessity of a registrant, or the government appeal agent may appeal to a board of appeal from any classification of a registrant by the local board except that no such person may appeal from the determination of the registrant's physical or mental condition by the examining physician, the examining station of the armed forces, or the local board.

(b) The government appeal agent may take any appeal authorized under paragraph (a) of this section at any time within 10 days after the date

when the local board mails to the registrant a Notice of Classification (Form 57) or at any time before the registrant is mailed an Order to Report for Induction (Form 150).

(c) The registrant, any person who claims to be a dependent of the registrant, or any person who has filed written evidence of the occupational necessity of the registrant may take an appeal authorized under (a) above at any time within 10 days after the date when the local board mails to the registrant a Notice of Classification (Form 57). At any time prior to the date that the local board mails to the registrant an Order to Report for Induction (Form 150), the local board may permit any such person to appeal, even though such 10-day period has elapsed, if it is satisfied that the failure of such person to appeal within the 10-day period was due to a lack of understanding of the right to appeal or to some cause beyond the control of such person. Unless the local board thereafter permits an appeal, the right of such persons to appeal shall expire at the end of the 10-day period. If such an extension of time to appeal is granted by the local board, a record thereof shall be entered on the Selective Service Questionnaire (Form 40) under the heading "Minutes of Other Actions."

\* \* \* \* \*

627.11 *How appeal to board of appeal is taken.*—(a) Any person entitled to do so may appeal in either of the following ways:

(1) By filing with the local board a written notice of appeal. Such notice need not be in any particular form but must state the name of the registrant and the name

and identity of the person appealing so as to show the right of appeal.

(2) By signing the "Appeal to Board of Appeal" on the Selective Service Questionnaire (Form 40).

\* \* \* \* \*

627.12 *Statement of person appealing.*—The person appealing may attach to his notice of appeal or to the Selective Service Questionnaire (Form 40) a statement specifying the respects in which he believes the local board erred, may direct attention to any information in the registrant's file which he believes the local board has failed to consider or give sufficient weight, and may set out in full any information which was offered to the local board and which the local board failed or refused to include in the registrant's file.

627.13 *Local board to transmit record to the board of appeal.*—(a) Immediately upon an appeal being taken to the board of appeal, the local board shall carefully check the registrant's file to make certain that all steps required by the regulations have been taken and the record is complete. If any facts considered by the local board do not appear in the written information in the file, the local board shall prepare and place in the file a written summary of such facts. In preparing such a summary the local board should be careful to avoid the expression of any opinion concerning information in the registrant's file and should refrain from including any argument in support of its decision.

(b) Immediately upon determining that all steps required by the regulations have been taken and that the record is complete, the local board

shall transmit the file to the board of appeal, provided that the State Director of Selective Service may direct the channels through which such file shall be forwarded to the board of appeal.

\* \* \* \* \*

627.23 *Preliminary review.*—The board of appeal will carefully check each file to determine whether all steps required by the regulations have been taken, whether the record is complete, and whether the information in the file is sufficient to enable it to determine the registrant's classification. If any steps have been omitted by the local board, if the record is incomplete, or if the information is not sufficient to enable the board of appeal to determine the classification of the registrant, the board of appeal shall return the file to the local board with proper instructions. If the board of appeal returns the file to the local board, it shall enter the date of the return in column 4 of the Docket Book of Board of Appeal (Form 102).

627.24 *Review by board of appeal.*—(a) The board of appeal shall consider appeals in the order in which they are received.

(b) In reviewing the appeal, no information shall be considered which is not contained in the record received from the local board and the decision of the board of appeal shall be based solely thereon.

627.25 *Special provisions where appeal involves claim that registrant is a conscientious objector.*—(a) If an appeal involves the question of whether or not a registrant is entitled to be sustained in his claim that he is a conscientious objector, the board of appeal shall first determine whether the registrant should be classified in one

of the classes set forth in section 623.21, in the order set forth, and if it so determines, it shall place such registrant in such class. If the board of appeal does not determine that such registrant belongs in one of such classes, it shall transmit the entire file to the United States district attorney for the judicial district in which the local board of the registrant is located for the purpose of securing an advisory recommendation of the Department of Justice, provided that in a case in which the local board has classified the registrant in Class IV-E or in a case in which the registrant has claimed objection to combatant service only and the local board has classified him in Class I-A-O, the board of appeal may affirm the classification of the local board without referring the case to the Department of Justice. No registrant's file shall be forwarded to the United States district attorney by any board of appeal and any file so forwarded shall be returned, unless in the "Minutes of Other Actions" on the Selective Service Questionnaire (Form 40) the record shows and the letter of transmittal states that the board of appeal reviewed the file and determined that the registrant should not be classified in one of the classes set forth in section 623.21.

(b) The Department of Justice shall thereupon make an inquiry and hold a hearing on the character and good faith of the conscientious objections of the registrant. The registrant shall be notified of the time and place of such hearing and shall have an opportunity to be heard. If the objections of the registrant are found to be sustained, the Department of Justice shall recommend to the board of appeal (1) that, if the regis-

trant is inducted into the land or naval forces, he shall be assigned to noncombatant service, or (2) that if the registrant is found to be conscientiously opposed to participation in such noncombatant service, he shall be assigned to work of national importance under civilian direction. If the Department of Justice finds that the objections of the registrant are not sustained, it shall recommend to the board of appeal that such objections be not sustained.

(c) Upon receipt of the report of the Department of Justice, the board of appeal shall determine the classification of the registrant, and in its determination it shall give consideration to, but it shall not be bound to follow, the recommendation of the Department of Justice.

627.26 *Decision of board of appeal.*—(a) The board of appeal shall classify the registrant, giving consideration to each class in the order in which the local board gives consideration thereto when it classifies a registrant. (See part 623.)

(b) [Such classification of the registrant shall be final, except where an appeal to the President is taken; provided, however, that this shall not be construed as prohibiting a local board from changing the classification of a registrant in a proper case under the provisions of part 626.

627.27 *Record of decision on appeal.*—When the board of appeal makes its classification, it shall record its decision, showing the yes and no vote, upon the Selective Service Questionnaire (Form 40) and in the Docket Book of Board of Appeal (Form 102), shall mark the case "Closed" in the "Remarks" column of the Docket Book of Board of Appeal (Form 102), and shall imme-

diately return the record to the local board, provided that the State Director of Selective Service may direct the channels through which the record shall be returned to the local board.

\* \* \* \*

627.41 *Appeal stays induction.*—A registrant shall not be inducted either during the period afforded him to take an appeal to the board of appeal or during the time such an appeal is pending.

\* \* \* \*

627.61 *Reconsideration of board of appeal determination.*—(a) When either the Director of Selective Service or the State Director of Selective Service deems it to be in the national interest or necessary to avoid an injustice, he may, at any time, request a board of appeal to reconsider any determination made by it, stating his reasons for requesting such reconsideration. Upon receiving such a request, a board of appeal will reconsider its determination in any case.

(b) At any time within 10 days after the date when the local board mails to the registrant a Notice of Classification (Form 57), as provided in section 627.31; or at any time before the registrant is mailed an Order to Report for Induction (Form 150), the government appeal agent, if he deems it to be in the national interest or necessary to avoid an injustice, may prepare and place in the registrant's file a recommendation that the State Director of Selective Service either request the board of appeal to reconsider its determination or appeal to the President. The registrant's file shall then be forwarded to the State Director of Selective Service. As soon as the State Director of Selective Service has acted

upon the government appeal agent's request he shall advise the local board and, if he determines neither to request the board of appeal to reconsider its determination nor to appeal to the President, he shall return the file to the local board.

\* \* \* \*

628.1 *Who may appeal to the President from any determination of a board of appeal.*—(a) When either the State Director of Selective Service or the Director of Selective Service deems it to be in the national interest or necessary to avoid an injustice, he may appeal to the President from any determination of a board of appeal. He may take such an appeal at any time.

(b) An appeal to the President may be taken by the Director of Selective Service (1) by mailing to the local board, through the State Director of Selective Service, a written notice of appeal or (2) by placing in the registrant's file a written notice of appeal and, through the State Director of Selective Service, advising the local board thereof.

(c) An appeal to the President may be taken by the State Director of Selective Service (1) by mailing to the local board a written notice of appeal and directing the local board to forward the registrant's file to him for transmittal to the Director of Selective Service or (2) by placing in the registrant's file a written notice of appeal and advising the local board thereof. Before he forwards the registrant's file to the Director of Selective Service, the State Director of Selective Service shall place in such file a written statement of his reasons for taking such appeal.

\* \* \* \*

628.2 *Appeal to the President.*—The registrant or any person who claims to be a dependent of the registrant or any person who has filed written information as to the occupational status of the registrant, at any time within 10 days after the mailing by the local board of the Notice of Classification (Form 57), notifying the registrant that the local board classification has been affirmed or changed, may appeal to the President provided the registrant was classified by the board of appeal in either Class I-A, Class I-A-O, or Class IV-E and one or more members of the board of appeal dissented from such classification. The local board may permit any person who is entitled to appeal to the President under this section to do so, even though the 10-day period herein provided for such an appeal has elapsed, if it is satisfied that the failure of such person to appeal within such 10-day period was due to a lack of understanding of the right to appeal or to some cause beyond the control of such person. Unless the local board permits such an appeal, the right of such persons to appeal to the President shall terminate at the end of the 10-day period herein provided.

\* \* \* \* \*

628.7 *Appeal to the President stays induction.*—(a) When a registrant is classified by the board of appeal and one or more members of the board of appeal dissent from such classification, the registrant shall not be inducted during the period afforded him to take an appeal to the President.

(b) A registrant shall not be inducted during the time an appeal to the President is pending.

\* \* \* \* \*

633.1 *Order to report for induction (Form 150).*—(a) Immediately upon determining which men are to report for induction, the local board shall prepare for each man an Order to Report for Induction (Form 150), in duplicate. The local board shall mail the original to the registrant and shall file the copy in his Cover Sheet (Form 53).

\* \* \* \* \*

633.9 *Induction.*—At the induction station, the selected men found acceptable will be inducted into the land or naval forces.

\* \* \* \* \*

633.13 *Classification when man is inducted.*—Upon receiving notice from the induction station that a selected man has been inducted, he shall be placed in Class I-C.

\* \* \* \* \*

633.13-2 *Classification of man not accepted.*—(a) Upon receiving notice from the induction station that a selected man has not been accepted because he is disqualified for service in the land or naval forces, the local board shall reopen his classification and classify him in Class IV-F unless he is a man who was honorably discharged from the land or naval forces based on physical or mental disability, in which case the local board shall classify him in Class I-C.

\* \* \* \* \*

651.1 *Selection of registrants for assignment to work of national importance.*—Every registrant

who is classified in Class IV-E, before he is assigned to work of national importance under civilian direction, shall be given a final-type physical examination for registrants in Class IV-E. Each such registrant shall be ordered to report for such examination when his order number is reached in the process of selecting Class I-A and Class I-A-O registrants to report for induction, provided his classification is not under consideration on appearance, reopening, or appeal, and the time in which he is entitled to request an appearance or take an appeal has expired.

*651.2 Ordering Class IV-E registrants to report for final-type physical examination.*—(a) When the order number of a registrant placed in Class IV-E has been reached under the circumstances set out in section 651.1, the local board shall prepare for each such man an Order to Report for Final-type Physical Examination (Form 48A) in duplicate. The local board shall mail the original to the registrant and file the remaining copy in the registrant's Cover Sheet (Form 53).

\* \* \* \*

*651.3 Separate delivery list (Form 151) for Class IV-E registrants.*—(a) Before the time set for Class IV-E registrants to report for final-type physical examination, the local board shall prepare a separate Delivery List (Form 151) for Class IV-E registrants, in triplicate, and stamp each such list at the top with the notation "IV-E." The local board shall make no entry in column 4 of this form.

\* \* \* \*

**651.7. Procedure for sending Class IV-E registrants to the induction station for final-type physical examination.**—(a) At the time and place designated for the Class IV-E registrants to report for final-type physical examination, the local board shall:

(1) Call the roll of Class IV-E registrants.

(2) Read and issue the appointment of the leader of Class IV-E registrants.

(3) Turn over to the leader of Class IV-E registrants the transportation request or tickets and the meal and lodging requests to cover a trip to the induction station and return to the local board and records for final-type physical examination.

(4) Specifically order the Class IV-E registrants to obey their leader.

(5) Specifically order the Class IV-E registrants to report to the induction station and, after final-type physical examination, to return to the local board.

(b) Class IV-E registrants shall proceed to the induction station for their final-type physical examination along with the selected men who are being delivered to the induction station with the next call on the local board, but if there is no such delivery of men to fill a call at an early date, it shall deliver such Class IV-E registrants specially whenever the induction station is receiving men.

**651.8. Final-type physical examination at induction station.**—At the induction station, Class IV-E registrants will be given a final-type physical examination in the same manner as that conducted for selected men. Upon completion of the final-type physical examination, Class IV-E

registrants will return to their local board under direction of their leader.

651.9. *Records returned by induction station commander for Class IV-E registrants.*—Each local board delivering Class IV-E registrants for final-type physical examination to an induction station will receive by mail from the induction station commander the following records: (1) The original and all copies of the Delivery List (Form 151) for Class IV-E registrants and (2) the original and all three copies of the Report of Physical Examination and Induction (Form 221). The local board will then forward to the State Director of Selective Service of its State a copy of each Delivery List (Form 151) for Class IV-E registrants.

651.10 *Action of local board following final-type physical examination of Class IV-E registrants.*—(a) When the Report of Physical Examination and Induction (Form 221) indicates that a registrant in Class IV-E is physically and mentally qualified for service, such registrant will be assigned to and delivered for work of national importance under civilian direction in the manner provided in part 652. Until the registrant is forwarded for work of national importance under civilian direction, the original and all copies of the Report of Physical Examination and Induction (Form 221) of each such registrant will be retained by the local board in the registrant's Cover Sheet (Form 53).

(b) When the Report of Physical Examination and Induction (Form 221) indicates that a registrant in Class IV-E is physically, mentally, or

otherwise disqualified for service, the local board will reopen his classification and classify him in Class IV-F.

\* \* \* \* \*

652.1 *Report of conscientious objector to Director of Selective Service.*—(a) When a registrant in Class IV-E has been found to be acceptable for work of national importance under civilian direction, the local board shall immediately notify the Director of Selective Service on a Conscientious Objector Report (Form 48) that the registrant is so acceptable and is available for assignment to work of national importance under civilian direction.

\* \* \* \* \*

652.2 *Assignment by Director of Selective Service.*—(a) The Director of Selective Service, upon receipt of (1) the Conscientious Objector Report (Form 48) for a registrant or (2) information from the land or naval forces that a registrant who has been inducted into the land or naval forces will be discharged because of conscientious objections which make him unadaptable to military service, shall assign the registrant to a camp. Such assignment will be made on an Assignment to Work of National Importance (Form 49), which shall be made out in triplicate. The original and one copy will be mailed to the State Director of Selective Service, who shall forward the original to the local board designated therein and file the copy. If the Assignment to Work of National Importance (Form 49) is sent to a local board other than the registrant's local board, the registrant's local board will be notified of such

action so that appropriate notations may be made in its records.

652.11 *Preparation and distribution of Order to Report; delinquency of IV-E registrants.*—(a) Upon receipt of an Assignment to Work of National Importance (Form 49) for a registrant, the local board shall prepare six copies of an Order to Report for Work of National Importance (Form 50). The local board shall then proceed as follows:

(1) In the case of a registrant classified in class IV-E: Mail the original of the Order to Report for Work of National Importance (Form 50) to the registrant at least 10 days before the date set for him to report. At the time the registrant leaves the local board for the camp, mail the remaining five copies of the Order to Report for Work of National Importance (Form 50), together with the Armed Forces' Original, the Surgeon General's Copy, and the National Headquarters' Copy of the registrant's Report of Physical Examination and Induction (Form 221), to the camp directors, and retain the Local Board's Copy of the registrant's Report of Physical Examination and Induction (Form 221) in the registrant's Cover Sheet (Form 53).

(2) In the case of a registrant discharged from the land or naval forces because of conscientious objections which make him unadaptable for military service: Mail or deliver to the registrant before the time set for him to report, the original of the Order to report for Work of National Importance (Form 50). At the time the registrant leaves the local board for the camp, mail

the remaining five copies of the Order to Report for Work of National Importance (Form 50), together with a letter explaining the circumstances under which the registrant was ordered to report for work of national importance, to the camp director at such camp. No other records shall be forwarded to the camp director with such registrant.

When an Order to Report for Work of National Importance (Form 50) is mailed or delivered to a registrant as hereinbefore provided, it shall be his duty to comply therewith, to report to the camp at the time and place designated therein, and to thereafter perform work of national importance under civilian direction for the period, at the place, and in the manner provided by law.

\* \* \* \* \*

652.12 *Transportation to camp.*—(a) When a registrant in Class IV-E reports to the local board for transportation to a camp for work of national importance under civilian direction, the local board shall prepare the necessary Government Requests for Transportation (Standard Form No. 1030) and Government Request for Meals and Lodgings for Civilian Registrants (Form 256) for use by the registrant between the local board and the camp. Except as otherwise provided herein, the local board will follow the same procedure in delivering the registrant to work of national importance under civilian direction as is followed in the case of a registrant delivered for induction into the land or naval forces.

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653.1 *Work projects.*—(a) The Director of Selective Service is authorized to establish, design-

nate, or determine work of national importance under civilian direction. He may establish, designate, or determine, by an appropriate order, projects which he deems to be work of national importance. Such projects will be identified by number and may be referred to as "civilian public service camps."

(b) Each work project will be under the civilian direction of the United States Department of Agriculture, United States Department of the Interior, or such other Federal, State, or Local governmental or private agency as may be designated by the Director of Selective Service. Each such agency will hereinafter be referred to as the "technical agency."

(c) The responsibility and authority for supervision and control over all work projects is vested in the Director of Selective Service.

653.2 *Camps.*—(a) The Director of Selective Service may arrange for the establishment of a camp at any project designated as work of national importance under civilian direction.

(b) Government-operated camps may be established in which the work of national importance and camp operations will both be under the civilian direction of a Federal technical agency using funds provided by the Selective Service System and operating under such camp rules as may be prescribed by the Director of Selective Service.

(c) The Director of Selective Service may authorize the National Service Board for Religious Objectors, a voluntary unincorporated association of religious organizations, to operate camps. The work project for assignees of such camps will be under the civilian direction of a technical agency.

Such camps and work projects shall be operated under such camp rules as may be prescribed by the Director of Selective Service.

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653.11 *Reception at camps.*—(a) When the assignee has reported to camp, the camp director shall complete the Order to Report for Work of National Importance (Form 50). Four copies of the completed Order to Report for Work of National Importance (Form 50) shall be sent to the Director of Selective Service; one copy will be retained by the camp director. The Director of Selective Service will forward two copies of the Order to Report for Work of National Importance (Form 50) to the appropriate State Director of Selective Service, who will retain one copy for his files and mail the other copy to the local board for filing in the registrant's Cover Sheet (Form 53).

(b) In the event an assignee does not report to the camp at the time prescribed in his Order to Report for Work of National Importance (Form 50) or pursuant to the instructions of the local board, the camp director will report such fact to the Director of Selective Service.

(c) If the assignee indicates that his physical condition has changed since his final-type physical examination for registrants in Class IV-E, the camp physician shall examine him with reference thereto. If the assignee is not accepted for work of national importance, the camp director will indicate the reason therefor, and the assignee, pending instructions from the Director

of Selective Service, will be retained in the camp or hospitalized where necessary.

(d) The camp director shall complete Item 79 of the Report of Physical Examination and Induction (Form 221), changing such parts thereof as may be required. The camp director shall retain the Armed Forces' Original of the Report of Physical Examination and Induction (Form 221) and shall forward the Surgeon General's Copy and the National Headquarters' Copy thereof to the Director of Selective Service.

(e) Upon receiving notice that a registrant has been accepted for work of national importance, the local board shall not change his classification but shall note the fact of his acceptance for such work in the Classification Record (Form 100).

(f) Upon receiving notice that a registrant has been rejected for work of national importance, the local board shall reopen his classification and classify him in Class IV-F.

\* \* \* \* \*

653.12 *Duties.*—Assignees shall report to the camp to which they are assigned; remain therein until released or transferred elsewhere by proper authority, except when performing assigned duties or on authorized missions or leave outside of camp; perform their assigned duties promptly and efficiently; keep their persons, clothing, equipment, and quarters neat and clean; conserve and protect Government property; conduct themselves both in and outside of the camp so as to bring no discredit to the individual or the organization; and comply with such camp rules as may be prescribed or such directions as may be issued

from time to time by the Director of Selective Service.

653.13 *Transfer*.—(a) The Director of Selective Service or any person authorized by the Director of Selective Service may order the transfer of an assignee from one camp or project to another, and no assignee shall be so transferred except when so ordered.

(b) If an assignee is transferred from one camp to another for the convenience of the assignee, such transfer shall be made at the expense of the assignee or of the religious organization desiring such transfer.

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653.15 *Release for induction into the land or naval forces*.—(a) The Director of Selective Service may release an assignee from active participation in work of national importance under civilian direction prior to the completion of his period of service for the purpose of permitting him to be inducted into the land or naval forces.

(b) An assignee's local board is authorized to change the classification of an assignee prior to his release from work of national importance under civilian direction upon receiving a request from the Director of Selective Service that the assignee's classification be reopened.

(c) When (1) an assignee makes an application to the Director of Selective Service to volunteer for induction into the land or naval forces either for combatant or noncombatant service or (2) an assignee's conduct indicates that he may have been improperly classified, the Director of Selective Service may request that the assignee's

classification be reopened and that the assignee be classified anew.

(d) An assignee's application to volunteer for induction into the land or naval forces either for combatant or noncombatant service shall be submitted to the Director of Selective Service through his camp director. Such application need not be in any particular form but shall contain the following information: The assignee's name, residence address at the time of assignment, order number, local board number and location, and the name of the camp to which he is assigned. The camp director is not required to approve or disapprove such request, but if he sees fit, he may submit a report concerning the assignee to the Director of Selective Service. Such assignee shall retain his status as an assignee and will remain in camp until released by the Director of Selective Service.

(e) Upon receipt of the request of the Director of Selective Service that the classification of the assignee be reopened, the local board shall consider the case under the provisions of part 626.

(f) If the classification of the assignee is changed by the local board to Class I-A or Class I-A-O, arrangements will be made by the Director of Selective Service for the assignee to be delivered to his local board or to a local board of transfer for induction into the land or naval forces. Such assignee shall remain in camp until released by the Director of Selective Service. Such assignee shall be furnished with necessary Government Requests for Transportation (Standard Form No. 1030) and Government Request for Meals or Lodgings for Civilian Registrants (Form

256) for travel between the camp and his local board or local board of transfer.

653.16 *Release for some reason other than for induction into the land or naval forces.*—(a) The Director of Selective Service may release an assignee from active participation in work of national importance under civilian direction prior to the completion of his period of service under conditions which would warrant release by the Secretary of War or the Secretary of the Navy of a registrant who has been inducted into the land or naval forces.

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## APPENDIX C

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MINISTRY OF LABOUR AND  
NATIONAL SERVICE,  
ST. JAMES'S SQUARE, LONDON, S. W. 1.,

*22d August 1942.*

DEAR DICKINSON: When I was in Washington I promised to let you have a note about our experience of dealing with Jehovah's Witnesses. I suppose that they are also known in America (as here) by the names of the International Bible Students Association or The Watch Tower Bible and Tract Society. As you know, this sect is of American origin. In the circumstances I need hardly trouble you with a statement about the strange beliefs held by the members or how they seek to support their claim to be neutral.

Jehovah's Witnesses of military age seem almost universally to claim to be conscientious objectors, and they support it on the basis of neutrality and various texts carefully selected from the Bible. I think that you know that under our laws the Tribunals that consider the applications of individual conscientious objectors are required to deal with them in one of the four following ways:

- (1) Register them as conscientious objectors unconditionally; or
- (2) Register them as conscientious objectors on condition that they undertake specified civilian work; or

(3) Register them as conscientious objectors but as persons liable for noncombatant military service; or

(4) Order them to be removed from the Register of Conscientious Objectors.

We have not kept separate statistics for Jehovah's Witnesses, but my impression is that they have seldom, if ever, been registered unconditionally and that they have been divided fairly evenly between the other three groups.

Many Jehovah's Witnesses claim to have consecrated their whole life to the service of Jehovah God and resolutely refuse to undertake the civilian work prescribed as a condition of registration. Appreciable numbers have been prosecuted and imprisoned for failure to comply with such conditions. Other Jehovah's Witnesses, who are liable for military service, either noncombatant or otherwise, often refuse to attend medical examination which is a statutory necessity before enlistment; prosecution follows such refusal and substantial terms of imprisonment are imposed. Women Jehovah's Witnesses have in many cases been directed under Defence Regulations to undertake civilian work, e. g. in a hospital, that could not be objectionable to a person suspected to be a conscientious objector to war, but they often, if not always, refuse; prosecution and imprisonment follow.

As I have already indicated we have no statistics to indicate how many Jehovah's Witnesses have been imprisoned, but I should not be surprised if the total of 400 claimed by the sect were somewhere near the mark.

There is another point that I should mention. Our law provides for regular ministers of religious denominations to be exempt from military service. A certain number of Jehovah's Witnesses have from time to time claimed exemption on these grounds, but the view taken here is that such a claim cannot be admitted. The Courts have not dissented from this view which we justify on the following grounds:

1. The Society of Jehovah's Witnesses in this country is not regarded as a religious denomination because the activities of the Witnesses are entirely controlled and directed by the International Bible Students Association, which is an incorporated company. This view is based on a test laid down by Lord Reading in the High Court during the last war that a religious denomination must (*inter alia*) be "a voluntary and *unincorporated* association of Christians." There is, moreover, considerable doubt as to the religious character of the work carried on by this company, as this work appears to consist mainly in the production and dissemination of tracts which are sold throughout the country by Witnesses acting under the direction of the company as a kind of sales staff remunerated by commission. Furthermore, it has been admitted on behalf of the Association that the Society is "neither a religious denomination nor a sect in the ordinary usage of these words."

2. Even if the Society could be regarded as a religious denomination, the view is taken that a person, in order to be regarded as a "regular" minister of a religious denomination must be empowered to perform and must regularly carry out all the

rites and ceremonies of the denomination which fall to be performed by a minister. The ministers or "servants" of this Society could not be regarded as regular ministers because—

(a) They cannot perform certain rites without being specifically appointed for each occasion; and

(b) Appointments to perform these rites are made only occasionally and there is apparently no guarantee that any particular individual would ever receive an appointment, or if he were once appointed, that he would be reappointed on another occasion;

(c) In any case no clear distinction in principle can be made between the general body of Witnesses and those Witnesses who are selected by the Association for special authority inasmuch as it is said that all Witnesses are ordained by God and, being appointed by the Association to act as "ministers of the Gospel", are equally qualified to perform any rites if they are specially authorized to do so. The acceptance of any of these persons as regular ministers of a religious denomination leads logically to the conclusion that every member of this so-called religious denomination should be excepted from liability on the same ground. This is a conclusion which, for obvious reasons, we are reluctant to accept.

I hope that Selective Service is flourishing and that you yourself are well. Please give my kindest regards to General Hershey.

Yours sincerely,

(S) G. MYRDDIN-EVANS.

Offices of  
**HAYDEN COVINGTON**

117 ADAMS STREET, BROOKLYN, NEW YORK,

January 27, 1942.

Lt. Col. CARLTON S. DARGUSCH,

*Deputy Director, Selective Service System,  
Washington, D. C.*

DEAR COLONEL DARGUSCH: Your letter of January 13, file 1-1.13-77, re "Pioneers of Jehovah's Witnesses."

Due to the fact that I have been away from the office on an extensive trip to various parts of the country, diligent and prompt answer was prevented to your letter concerning the course of study in the Bible and Bible helps prescribed by the Society with respect to persons admitted to pioneer status by said Society. I have taken the matter up with the Society and they advise:

No specified educational background is required of any individual precedent to admission to the pioneer ranks. However, the Watchtower Bible and Tract Society has provided eighteen and more volumes and publishes the semi-monthly magazine, the Watchtower, dealing with doctrinal and prophetic teachings of the Bible and those enrolling are required to have made a thorough study of these and subscribed to such teachings before they are accepted for pioneer service.

The Society maintains "companies," which might be called branch schools, in thousands of towns and cities throughout the United States, under the immediate direction of competent instructors, elders, ministers and "servants", duly

appointed by the Society, who regularly, not less than twice each week of the year, give instruction in the Bible. Each session of study is not less than one hour. This is done through conducting studies in the various publications above referred to, together with the Bible.

All persons who have covenanted to do the will of Almighty God and who have been acquainted with or who desire to become acquainted with the prophecies of the Bible, as revealed through the publications of the Society, are invited to and do attend such studies. They are permitted to receive instructions at such "companies" or "schools" above referred to.

Each applicant for pioneer work has attended one ~~or~~ more of these schools for a satisfactory length of time.

One desiring to enter the pioneer ranks must submit an application providing the Society with certain information, showing whether he is a student of the Watchtower magazine and the publications of the Society, for what length of time, whether he is entirely in accord with the explanations of the Bible therein contained and provide other evidence showing how long he has been connected with the local "company" of Jehovah's Witnesses and in attendance of such "schools."

If from such application, the Society is not convinced of the qualification of the applicant in that regard, a further investigation is conducted through the "company servant" and study conductors in charge of the local "company" or "school," before passing on the application.

No specified time is required in study and

preparation because of the varying ability of the different ones. The Society, as such, does not maintain so-called "divinity" schools in the manner conducted by the worldly religious institutions because it should be remembered that the Lord Jesus Christ's apostle Peter and many other faithful ministers were not required to and did not attend divinity schools. The Apostle Peter was trained as a fisherman until invited by the Lord Jesus to engage in the "ministry," and he and the other apostles were referred to by the officials and religionists of that day as "unlearned and ignorant men." Acts 4:5-13.

To be "ordained" means to be appointed by the proper authority to a position or office to perform the duties specifically assigned. Jehovah's Witnesses being selected by Jehovah God, it follows that he is the authority that ordains the servant, as it is written at Isaiah 61:1-3. That scripture states the commission of authority given by the Lord God to those persons. Since Jehovah's Witnesses operate in a legal and orderly way through their corporate representative, the Watchtower Bible & Tract Society, Inc., they also receive the earthly ordination hereinafter referred to.

No diploma or certificate, as such, is issued by the "company" or "school" where the person attends. However, after being duly admitted to the pioneer rolls, and demonstrating sincerity and ability over a satisfactory period of time, the Society issues a certificate signed by the Superintendent of Evangelists of the Society, subscribed to before a Notary Public, a sample copy of which is attached hereto, when requested by the Pioneer.

There is forwarded to all persons qualifying

themselves to act as Jehovah's witnesses, including the pioneers, a printed identification card, containing the signature of the President of the Society, acting for the Society, certifying that the bearer is an ordained minister, a sample of which has been heretofore forwarded to you.

Sincerely,

(S) HAYDEN COVINGTON.

## APPENDIX D

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### *Current Selective Service Classifications*

- I-A—Available for military service (Reg. 622.11).
- I-A-O—Conscientious objector available for non-combatant military service (Reg. 622.12).
- I-C—Member of the land or naval forces of the United States, including every registrant who is, or who by induction, enlistment, or appointment becomes, a commissioned officer, warrant officer, field clerk, pay clerk, or enlisted man of any branch of such forces (Reg. 622.15).
- II-A—Man necessary in support of the war effort (Reg. 622.21).
- II-B—Man necessary in war production (Reg. 622.22).
- II-C—Man necessary to and regularly engaged in an agricultural occupation or an agricultural endeavor essential to the war effort (Reg. 622.25).
- III-A—Man who with his child or children maintains a bona fide family relationship in their home, provided such status was acquired prior to December 8, 1941 (Reg. 622.31).
- III-C—Man who is necessary to and regularly engaged in an agricultural occupation or

an agricultural endeavor essential to the war effort, and who has a wife or child with whom he maintains a bona fide family relationship in their home, or has certain other persons dependent upon him, provided such dependency status was acquired prior to December 8, 1941 (Reg. 622.31-2).

III-D—Man deferred by reason of extreme hardship and privation to his wife, child, or parent with whom he maintains a bona fide family relationship in their home (Reg. 622.32).

IV-A—Man who has attained the forty-fifth anniversary of his birth (Reg. 622.41).

IV-B—Officials deferred by law and men relieved from liability for training and service (Reg. 622.42).

IV-C—Registrants not acceptable for training and service because of nationality or ancestry, neutral aliens requesting relief from training and service, aliens not acceptable to the armed forces or to the Director of Selective Service, and non-declarant aliens who depart with intention not to return.

IV-D—Regular or duly ordained minister of religion or student preparing for the ministry in a theological or divinity school which has been recognized as such for more than one year prior to September 16, 1940, the date of enactment of the Selective Training and Service Act (Reg. 622.44).

**IV-E—Registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and to be conscientiously opposed to both combatant and noncombatant military service.**

**IV-F—Morally, physically, or mentally unfit for any military service or work of national importance (Regs. 622.61, 622.62).**